Land Reform (Scotland) Act 2003

2003 asp 2

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 23rd January 2003 and received Royal Assent on 25th February 2003

An Act of the Scottish Parliament to establish statutory public rights of access to land for recreational and other purposes, and to extend some of the provisions for that purpose to rights of way and other rights; to make provision under which bodies representing rural and crofting communities may buy the land with which those communities have a connection; and for connected purposes.

PART 1

ACCESS RIGHTS

CHAPTER 1

NATURE AND EXTENT OF ACCESS RIGHTS

1 Access rights

(1) Everyone has the statutory rights established by this Part of this Act.

(2) Those rights (in this Part of this Act called "access rights") are—

(a) the right to be, for any of the purposes set out in subsection (3) below, on land; and

(b) the right to cross land.

(3) The right set out in subsection (2)(a) above may be exercised only—

(a) for recreational purposes;

(b) for the purposes of carrying on a relevant educational activity; or

(c) for the purposes of carrying on, commercially or for profit, an activity which the person exercising the right could carry on otherwise than commercially or for profit.

(4) The reference—

(a) in subsection (2)(a) above to being on land for any of the purposes set out in subsection (3) above is a reference to—

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(i) going into, passing over and remaining on it for any of those purposes and then leaving it; or

(ii) any combination of those;

(b) in subsection (2)(b) above to crossing land is a reference to going into it, passing over it and leaving it all for the purpose of getting from one place outside the land to another such place.

(5) A "relevant educational activity" is, for the purposes of subsection (3) above, an activity which is carried on by a person for the purposes of—

(a) furthering the person's understanding of natural or cultural heritage; or

(b) enabling or assisting other persons to further their understanding of natural or cultural heritage.

(6) Access rights are exercisable above and below (as well as on) the surface of the land.

(7) The land in respect of which access rights are exercisable is all land except that specified in or under section 6 below.

Modifications etc. (not altering text)

C1 S. 1 excluded (1.7.2005) by Serious Organised Crime and Police Act 2005 (c. 15), **ss. 131(1)(c)**, 178; S.I. 2005/1521, **art. 3(n)**

2 Access rights to be exercised responsibly

(1) A person has access rights only if they are exercised responsibly.

(2) In determining whether access rights are exercised responsibly a person is to be presumed to be exercising access rights responsibly if they are exercised so as not to cause unreasonable interference with any of the rights (whether access rights, rights associated with the ownership of land or any others) of any other person, but—

(a) a person purporting to exercise access rights who, at the same time—

(i) engages in any of the conduct within section 9 below or within any byelaw made under section 12(1)(a)(i) below; or

(ii) does anything which undoes anything done by Scottish Natural Heritage under section 29 below,

is to be taken as not exercising those rights responsibly; and

(b) regard is to be had to whether the person exercising or purporting to exercise access rights is, at the same time—

(i) disregarding the guidance on responsible conduct set out in the Access Code and incumbent on persons exercising access rights; or

(ii) disregarding any request included or which might reasonably be implied in anything done by Scottish Natural Heritage under section 29 below.

(3) In this section the references to the responsible exercise of access rights are references to the exercise of these rights in a way which is lawful and reasonable and takes proper account of the interests of others and of the features of the land in respect of which the rights are exercised.

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3 Reciprocal obligations of owners

(1) It is the duty of every owner of land in respect of which access rights are exercisable—
  (a) to use and manage the land; and
  (b) otherwise to conduct the ownership of it,
in a way which, as respects those rights, is responsible.

(2) In determining whether the way in which land is used, managed or the ownership of it is conducted is responsible an owner is to be presumed to be using, managing and conducting the ownership of land in a way which is responsible if it does not cause unreasonable interference with the access rights of any person exercising or seeking to exercise them, but—
  (a) an owner who contravenes section 14(1) or (3) or 23(2) of this Act or any byelaw made under section 12(1)(a)(ii) below is to be taken as not using, managing or conducting the ownership of the land in a responsible way;
  (b) regard is to be had to whether any act or omission occurring in the use, management or conduct of the ownership of the land disregards the guidance on responsible conduct set out in the Access Code and incumbent on the owners of land.

(3) In this section the references to the use, management and conduct of the ownership of land in a way which is responsible are references to the use, management and conduct of the ownership of it in a way which is lawful and reasonable and takes proper account of the interests of persons exercising or seeking to exercise access rights.

4 Modification of sections 9, 14 and 23

(1) Ministers may by order modify, for the purposes of section 2 and 3 above, any of the provisions of sections 9, 14 and 23 below.

(2) They may do so generally (that is to say in terms similar to those in sections 2 and 3 above as enacted) or by making provision which relates to particular areas, locations or classes of land or to particular access rights or particular activities which may take place in the exercise of access rights or to particular ways of using, managing or conducting the ownership of land or any combination of those.

(3) Before doing so, they shall consult such persons whom they consider to have a particular interest in the effect of the proposed modification (or associations representing such persons) and such other persons as they think fit.

5 Access rights, reciprocal obligations and other rules and rights

(1) The exercise of access rights does not of itself constitute trespass.

(2) The extent of the duty of care owed by an occupier of land to another person present on the land is not, subject to section 22(4) below, affected by this Part of this Act or by its operation.

(3) The existence or exercise of access rights does not diminish or displace any other rights (whether public or private) of entry, way, passage or access.

(4) The existence or exercise of access rights does not diminish or displace any public rights under the guardianship of the Crown in relation to the foreshore.

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(5) The exercise of access rights does not of itself amount to the exercise or possession of any right for the purpose of any enactment or rule of law relating to the circumstances in which a right of way or servitude or right of public navigation may be constituted.

(6) Access rights do not constitute a public right of passage for the purposes of the definition of "road" in section 151(1) (interpretation) of the Roads (Scotland) Act 1984 (c. 54).

(7) A person exercising access rights is to be regarded as being in a public place for the purposes of section 53 (obstruction by pedestrians) of the Civic Government (Scotland) Act 1982 (c. 45).

CHAPTER 2

NATURE AND EXTENT OF ACCESS RIGHTS: FURTHER PROVISIONS

6 Land over which access rights not exercisable

(1) The land in respect of which access rights are not exercisable is land—

(a) to the extent that there is on it—

(i) a building or other structure or works, plant or fixed machinery;

(ii) a caravan, tent or other place affording a person privacy or shelter;

(b) which—

(i) forms the curtilage of a building which is not a house or of a group of buildings none of which is a house;

(ii) forms a compound or other enclosure containing any such structure, works, plant or fixed machinery as is referred to in paragraph (a)(i) above;

(iii) consists of land contiguous to and used for the purposes of a school; or

(iv) comprises, in relation to a house or any of the places mentioned in paragraph (a)(ii) above, sufficient adjacent land to enable persons living there to have reasonable measures of privacy in that house or place and to ensure that their enjoyment of that house or place is not unreasonably disturbed;

(c) to which, not being land within paragraph (b)(iv) above, two or more persons have rights in common and which is used by those persons as a private garden;

(d) to which public access is, by or under any enactment other than this Act, prohibited, excluded or restricted;

(e) which has been developed or set out—

(i) as a sports or playing field; or

(ii) for a particular recreational purpose;

(f) to which—

(i) for not fewer than 90 days in the year ending on 31st January 2001, members of the public were admitted only on payment; and

(ii) after that date, and for not fewer than 90 days in each year beginning on 1st February 2001, members of the public are, or are to be, so admitted;

(g) on which—

(i) building, civil engineering or demolition works; or

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(ii) works being carried out by a statutory undertaker for the purposes of the undertaking,

are being carried out;

(h) which is used for the working of minerals by surface workings (including quarrying);

(i) in which crops have been sown or are growing;

(j) which has been specified in an order under section 11 or in byelaws under section 12 below as land in respect of which access rights are not exercisable.

(2) For the purposes of subsection (1)(a)(i) above, a bridge, tunnel, causeway, launching site, groyne, weir, boulder weir, embankment of a canalised waterway, fence, wall or anything designed to facilitate passage is not to be regarded as a structure.

7 Provisions supplementing and qualifying section 6

(1) Section 6 above does not prevent or restrict the exercise of access rights over any land which is a core path.

(2) Land which bears to be within section 6 above by virtue of a development or change of use for which planning permission was or is required under the Town and Country Planning (Scotland) Act 1997 (c. 8) shall, if—

(a) such planning permission has not been granted; or

(b) such permission was granted subject to a condition which has not been complied with,

be regarded, for the purposes of that section, as if that development or change of use had not occurred.

(3) Where planning permission for such a development or change of use of land has been granted, the land shall, for the purposes of section 6 above, be regarded, while that development or change of use is taking place in accordance with the permission, as having been developed or having had its use changed accordingly.

(4) In section 6(1)(b)(iii) above, "school" means not only a school within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c. 44) but also any other institution which provides education for children below school age within the meaning of that provision.

(5) There are included among the factors which go to determine what extent of land is sufficient for the purposes mentioned in section 6(1)(b)(iv) above, the location and other characteristics of the house or other place.

(6) For the purposes of section 6(1)(d) above, access rights do not extend to the land to which public access is prohibited, excluded or restricted only to the extent of the prohibition, exclusion or restriction.

(7) Section 6(1)(e) above prevents the exercise of access rights over land to which it applies only if—

(a) the land is being used for the purpose for which it has been developed or set out and, in the case of land which is not a sports or playing field, the exercise of those rights would interfere with the recreational use to which the land is being put;

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(b) the land is a golf green, bowling green, cricket square, lawn tennis court or other similar area on which grass is grown and prepared for a particular recreational purpose; or

(c) in the case of land which is a sports or playing field, the surface of the land is comprised of synthetic grass, acrylic, resin or rubber granule.

(8) For the purposes of section 6(1)(e) above, land which has been developed or set out for a particular recreational purpose does not include land on which groynes have been constructed, deepening of pools has been undertaken, fishing platforms have been erected, or where other works for the purposes of fishing have taken place.

(9) Section 6(1)(f) above does not prevent or restrict the exercise of access rights over land to which it applies by any person who forms part of a class of persons who are not, on the days taken into account for the purposes of determining whether that provision applies in relation to the land, required to pay to gain admittance to the land.

(10) For the purposes of section 6(1)(i) above land on which crops are growing—

(a) includes land on which grass is being grown for hay and silage which is at such a late stage of growth that it is likely to be damaged by the exercise of access rights in respect of the land in which it is growing, but otherwise does not include grassland;

(b) does not include headrigs, endrigs or other margins of fields in which crops are growing,

[[F1](c) does not include land used wholly or mainly–

(i) as woodland or an orchard, or

(ii) for the growing of trees;

but does include land used wholly for the cultivation of tree seedlings in beds,**]**and "crops" means plants which are cultivated for agricultural, [F2]. . . or commercial purposes.

Textual Amendments

F1 S. 7(10)(c) and words inserted (9.2.2005) by The Land Reform (Scotland) Act 2003 (Modification) Order 2005 (S.S.I. 2005/65), **art. 2(a)**

F2 Word deleted (9.2.2005) by The Land Reform (Scotland) Act 2003 (Modification) Order 2005 (S.S.I. 2005/65), **art. 2(b)**

8 Adjustment of land excluded from access rights

(1) Ministers may by order modify any of the provisions of section 6 and 7 above.

(2) They may do so generally (that is to say, in terms similar to those in sections 6 and 7 above as enacted) or by making provision which relates to particular areas, locations or classes of land.

(3) Before doing so, they shall consult such persons whom they consider to have a particular interest in the effect of the proposed modification (or associations representing such persons) and such other persons as they think fit.

9 Conduct excluded from access rights

The conduct which is within this section is—

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(a) being on or crossing land in breach of an interdict or other order of a court;
(b) being on or crossing land for the purpose of doing anything which is an offence or a breach of an interdict or other order of a court;
(c) hunting, shooting or fishing;
(d) being on or crossing land while responsible for a dog or other animal which is not under proper control;
(e) being on or crossing land for the purpose of taking away, for commercial purposes or for profit, anything in or on the land;
(f) being on or crossing land in or with a motorised vehicle or vessel (other than a vehicle or vessel which has been constructed or adapted for use by a person who has a disability and which is being used by such a person);
(g) being, for any of the purposes set out in section 1(3) above, on land which is a golf course.

CHAPTER 3

THE SCOTTISH OUTDOOR ACCESS CODE

10 The Scottish Outdoor Access Code

(1) It is the duty of Scottish Natural Heritage to draw up and issue a code, to be known as the Scottish Outdoor Access Code, setting out, in relation to access rights, guidance as to the circumstances in which—
(a) those exercising these rights are to be regarded as doing so in a way which is or is not responsible;
(b) persons are to be regarded as carrying on activities, otherwise than in the course of exercising access rights, in a way which is likely to affect the exercise of these rights by other persons;
(c) owners of land in respect of which these rights are exercisable are to be regarded as using and managing, or otherwise conducting the ownership of it, in a way which is or is not responsible;
(d) owners of land in respect of which these rights are not exercisable are to be regarded as using and managing, or otherwise conducting the ownership of it, in a way which is likely to affect the exercise of these rights on land which is contiguous to that land.

(2) Scottish Natural Heritage shall consult local authorities and such other persons or bodies as they think appropriate about the proposed Access Code and then submit it (with or without modifications) to Ministers together with copies of any objections or representations made in response to that consultation.

(3) On receiving a proposed Access Code, Ministers may—
(a) approve it, with or without modifications; or
(b) reject it.

(4) Where Ministers reject a proposed Access Code under subsection (3)(b) above they may either instruct Scottish Natural Heritage to submit a new Code or they may substitute a Code of their own devising.

(5) Where Ministers approve an Access Code with or without modification under subsection (3)(a) above or devise a Code themselves under subsection (4) above,

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they shall lay the proposed Code before the Scottish Parliament and Scottish Natural Heritage shall not issue the Code unless it has been approved by resolution of the Parliament.

(6) The Access Code comes into operation on such date as Ministers fix.

(7) It is the duty of—

(a) Scottish Natural Heritage and local authorities to publicise the Access Code;

(b) Scottish Natural Heritage to promote understanding of it.

(8) Scottish Natural Heritage shall keep the Access Code under review and may modify it from time to time.

(9) In reviewing the Access Code, Scottish Natural Heritage shall consult such persons or bodies as they think appropriate about the operation of the Code.

(10) Subsections (2) to (6) above apply to modifications of the Access Code as they apply to the Code.

CHAPTER 4

REGULATION AND PROTECTION OF ACCESS RIGHTS

11 Power to exempt particular land from access rights

(1) The local authority may (whether on application made to them or not) by order under this section made in respect of a particular area of land specified in the order exempt it for a particular purpose specified in the order from the access rights which would otherwise be exercisable in respect of it during such times as may be specified in the order.

(2) Before making an order under this section which would have effect for a period of six or more days, the local authority shall—

(a) consult the owner of the land to which it would relate, the local access forum established by them and such other persons as they think appropriate; and

(b) give public notice of the intended purpose and effect of the proposed order,

inviting objections to be sent to them within such reasonable time as is specified in the notice; and shall consider any such objections and any other representations made to them.

(3) An order under this section which would have effect for such a period requires confirmation by Ministers.

(4) It is the duty of the local authority to send to Ministers—

(a) copies of any objections made in response to the invitation under subsection (2) above; and

(b) any other representations made to them,

in relation to an order requiring such confirmation.

(5) Ministers—

(a) shall not confirm such an order without considering any objections or representations sent to them under subsection (4) above; and

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(b) may cause an inquiry to be held for the purposes of enabling them to decide whether to confirm the order.

(6) Subsections (2) to (13) of section 265 (local inquiries) of the Town and Country Planning (Scotland) Act 1997 (c. 8) apply to an inquiry held under subsection (5)(b) above as they apply to one held under that section.

(7) Ministers may—

(a) confirm the order, with or without modifications; or

(b) refuse to confirm it.

(8) An order under this section takes effect—

(a) where the order does not require to be confirmed by Ministers, from the date on which it is made or such other date as may be specified in it for the purpose; or

(b) where the order requires to be so confirmed, from such date as is specified in it for the purpose or such other date as Ministers may direct when confirming it.

(9) The local authority shall give public notice of their making an order under this section as soon as practicable after it is made or, where the order requires to be confirmed by Ministers, the authority receive notice of such confirmation.

(10) The power of a local authority to make an order under this section includes power to revoke, amend or re-enact any such order.

(11) Where a revoked, amended or re-enacted order would—

(a) but for the revocation or amendment; or, as the case may be

(b) by virtue of the amendment or re-enactment,

have effect for a period of six or more days beginning on or after the date on which it is revoked, amended or re-enacted, subsections (2) to (9) above apply in relation to the revocation, amendment or, as the case may be, re-enactment.

(12) An order under this section has effect, subject to subsection (13) below—

(a) for the period of two years beginning on the day on which the order takes effect;

(b) where the order specifies that it is to cease to have effect for such shorter period as may be specified in the order, for that shorter period; or

(c) where the order is revoked with effect from a day which falls before the end of that period or, as the case may be, that shorter period, until that day.

(13) If, at any time before an order under this section ceases to have effect, the local authority which made the order re-enacts it, the order continues to have effect—

(a) for the period of two years beginning on the day on which the order would otherwise have ceased to have effect under subsection (12)(a) or (b) above (or, as the case may be, under this paragraph or paragraph (b) below);

(b) where the order (as amended or re-enacted) specifies that it is to cease to have effect for such shorter period as may be specified in the order, for that shorter period; or

(c) where the order is revoked with effect from a day which falls before the end of that period or, as the case may be, that shorter period, until that day.

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12 Byelaws in relation to land over which access rights are exercisable

(1) The local authority may, in relation to land in respect of which access rights are exercisable, make byelaws—

(a) making provision further or supplementary to that made—

(i) by sections 2 and 9 and under section 4 above as to the responsible exercise of access rights; and

(ii) by section 3(2) and under section 4 above as to the responsible use, management and conduct of the ownership of the land;

(b) specifying land for the purposes of section 6(j) above;

(c) providing for—

(i) the preservation of public order and safety;

(ii) the prevention of damage;

(iii) the prevention of nuisance or danger;

(iv) the conservation or enhancement of natural or cultural heritage.

(2) Byelaws made under section (1)(c) above may, in particular—

(a) prohibit, restrict or regulate the exercise of access rights;

(b) facilitate their exercise;

(c) so as to protect and further the interests of persons who are exercising or who might exercise access rights, prohibit or regulate—

(i) the use of vehicles or vessels;

(ii) the taking place of sporting and recreational activities;

(iii) the conduct of any trade or business;

(iv) the depositing or leaving of rubbish or litter; and

(v) the lighting of fires and the doing of anything likely to cause a fire,

on the land.

(3) Byelaws made under this section shall not interfere with the exercise of—

(a) any public right of way or navigation; or

(b) the functions of a statutory undertaker.

(4) Sections 202 to 204 (byelaws) of the Local Government (Scotland) Act 1973 (c. 65) apply to byelaws made under this section as they apply to byelaws made under that Act, but with the following modifications and further provisions.

(5) The references to one month in subsections (4), (5) and (7) of section 202 shall be read as references to such period of not less than 12 weeks as the local authority determine.

(6) The local authority shall, at the same time as they first make the proposed byelaws open to public inspection, consult the persons and bodies mentioned in subsection (7) below on the proposed byelaws.

(7) Those persons and bodies are—

(a) every community council whose area includes an area to which the proposed byelaws would apply;

(b) the owners of land to which the proposed byelaws would apply;

(c) such persons as appear to them to be representative of the interests of those who live, work, carry on business or engage in recreational activities on any land affected by the proposed byelaws;

(d) the local access forum established by them;

(e) every statutory undertaker which carries on its undertaking on land to which the proposed byelaws would apply;

(f) Scottish Natural Heritage; and

(g) such other persons as they think fit.

(8) The local authority are, for the purposes of subsection (6) above, to be taken as having consulted a person of whom or a body of which they have no knowledge or whom or which they cannot find if they have taken reasonable measures to ascertain whether the person or body exists or, as the case may be, the person's or body's whereabouts.

CHAPTER 5

LOCAL AUTHORITY FUNCTIONS: ACCESS AND OTHER RIGHTS

13 Duty of local authority to uphold access rights

(1) It is the duty of the local authority to assert, protect and keep open and free from obstruction or encroachment any route, waterway or other means by which access rights may reasonably be exercised.

(2) A local authority is not required to do anything in pursuance of the duty imposed by subsection (1) above which would be inconsistent with the carrying on of any of the authority's other functions.

(3) The local authority may, for the purposes set out in subsection (1) above, institute and defend legal proceedings and generally take such steps as they think expedient.

14 Prohibition signs, obstructions, dangerous impediments etc.

(1) The owner of land in respect of which access rights are exercisable shall not, for the purpose or for the main purpose of preventing or deterring any person entitled to exercise these rights from doing so—

(a) put up any sign or notice;

(b) put up any fence or wall, or plant, grow or permit to grow any hedge, tree or other vegetation;

(c) position or leave at large any animal;

(d) carry out any agricultural or other operation on the land; or

(e) take, or fail to take, any other action.

(2) Where the local authority consider that anything has been done in contravention of subsection (1) above they may, by written notice served on the owner of the land, require that such remedial action as is specified in the notice be taken by the owner of the land within such reasonable time as is so specified.

(3) If the owner fails to comply with such a notice, the local authority may—

(a) remove the sign or notice; or, as the case may be,

(b) take the remedial action specified in the notice served under subsection (2) above,

and, in either case, may recover from the owner such reasonable costs as they have incurred by acting under this subsection.

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(4) An owner on whom a notice has been so served may, by summary application made to the sheriff, appeal against it.

(5) Rules of Court shall provide—
- (a) for public notice of the making of summary applications for the purposes of this section;
- (b) for enabling persons interested in the exercise of access rights over the land to which a summary application relates, and persons or bodies representative of such persons, to be parties to the proceedings;
- (c) for limiting the number of persons and bodies who may be such parties.

15 Measures for safety, protection, guidance and assistance

(1) The local authority may take such steps (which may include the putting up and maintenance of notices and fences) as appear to them appropriate—
- (a) to warn the public of and protect the public from danger on any land in respect of which access rights are exercisable;
- (b) to indicate or enclose, or to give directions to, any such land.

(2) Where the local authority consider that a fence, wall or other erection is so constructed or adapted (whether by the use of barbed wire or other sharp material or by being electrified or otherwise) as to be likely to injure a person exercising access rights, they may by written notice served on the owner of the land on which it is placed, require the owner to take, within such reasonable time as is specified in the notice, such reasonable action as is so specified, being action calculated to remove the risk of injury.

(3) Subsections (3)(b), (4) and (5) of section 14 above apply in respect of a notice served under subsection (2) above as they apply to a notice served under those subsections.

(4) The local authority may install and maintain, in any land in respect of which access rights are exercisable, gates, stiles, moorings, launching sites or other means of facilitating the exercise of these rights, and seats, lavatories and other means of contributing to the comfort and convenience of persons exercising them.

(5) The local authority may, in relation to inland waters in respect of which access rights are exercisable, provide staff for life saving and any boats or equipment which are appropriate for life saving.

(6) In exercising their powers under this section, the local authority shall—
- (a) have regard to the extent to which there are existing facilities in their area for the purposes of assisting persons to exercise access rights; and
- (b) have regard to the needs of persons with disabilities.

(7) The local authority may carry out the operations authorised by subsections (4) and (5) above within the land over which the access rights are exercisable only with the consent of the owner.

16 Acquisition by local authority of land to enable or facilitate exercise of access rights

(1) Where it appears to the local authority to be necessary or expedient for the purpose of enabling or facilitating the exercise of access rights in respect of any land to which this section applies that the land be acquired by them, the authority may—

(a) acquire it by agreement (whether by purchase, feu, lease or excambion); or
(b) with the consent of Ministers, acquire it compulsorily.

(2) The land to which this section applies is land other than—
(a) land in respect of which access rights do not extend by virtue of section 6(1)(a)(ii), (d), (e) or (f) above;
(b) land which has been exempted by order made by the local authority under section 11(1) of this Act.

(3) A local authority shall hold and manage any land acquired by them under this section so as best to facilitate the exercise of access rights.

(4) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) shall apply in relation to a compulsory purchase under this section as if this section had been in force immediately before that Act.

17 Core paths plan

(1) It is the duty of the local authority, not later than 3 years after the coming into force of this section, to draw up a plan for a system of paths ("core paths") sufficient for the purpose of giving the public reasonable access throughout their area.

(2) Such a system of paths may include—
(a) rights of way by foot, horseback, pedal cycle or any combination of those, being rights which are or may be established by or under any enactment or rule of law;
(b) paths, footways, footpaths, cycle tracks or other means of access (however described but not falling within paragraph (a) above) which are or may be provided by or under any enactment other than this Act;
(c) paths which are or may be delineated by a path agreement under section 21 or a path order under section 22 below;
(d) other routes, waterways or other means by which persons may cross land.

(3) In drawing up the plan, the local authority shall have regard to—
(a) the likelihood that persons exercising rights of way and access rights will do so by using core paths;
(b) the desirability of encouraging such persons to use core paths; and
(c) the need to balance the exercise of those rights and the interests of the owner of the land in respect of which those rights are exercisable.

(4) The plan may consist of or include maps showing core paths and, where it does not, shall refer to such maps.

18 Core paths plan: further procedure

(1) The local authority shall—
(a) give public notice of the plan drawn up by them under section 17 above and any maps it refers to;
(b) make the plan and any such maps available thereafter for public inspection for a period of not less than 12 weeks; and
(c) consult—
(i) the local access forum for their area;

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(ii) persons representative of those who live, work, carry on business or engage (or would be likely to engage) in recreational activities on the land on which it is proposed that there be core paths;

(iii) Scottish Natural Heritage; and

(iv) such other persons as the local authority think fit,

in each case inviting objections and representations to be made to them within such period as they specify.

(2) If no objections are made or any made are withdrawn, the local authority shall adopt the plan.

(3) If an objection is made and not withdrawn, the local authority shall not adopt the plan unless Ministers direct them to do so.

(4) Where an objection remains unwithdrawn, Ministers shall not make such a direction without first causing a local inquiry to be held into whether the plan will, if adopted, fulfil the purpose mentioned in section 17(1) above.

(5) Ministers may, in any other case, cause such an inquiry to be held.

(6) Subsections (2) to (13) of section 265 (local inquiries) of the Town and Country Planning (Scotland) Act 1997 (c. 8) apply to an inquiry held under subsection (4) or (5) above as they apply to one held under that section.

(7) Following the publication of the report by the person appointed to hold the inquiry, Ministers may (but need not) direct the local authority to adopt the plan either as drawn up under section 17 above or with such modification as Ministers specify in the direction.

(8) On adopting the plan, the local authority shall—

(a) give public notice of its adoption;

(b) compile a list of core paths;

(c) keep the plan, any maps it refers to and the list available for public inspection and for sale at a reasonable price; and

(d) send a copy of each of those documents to Ministers.

(9) Where Ministers decline to make a direction under subsection (3) or (7) above, the local authority shall draw up a revised plan and shall do so in accordance with such procedure and within such time limits as Ministers specify.

(10) Such specification shall include provision under which Ministers may (but need not) direct the local authority to confirm the revised plan.

19 Power to maintain core paths etc.

The local authority may do anything which they consider appropriate for the purposes of—

(a) maintaining a core path;

(b) keeping a core path free from obstruction or encroachment;

(c) providing the public with directions to, or with an indication of the extent of, a core path.

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20 Review and amendment of core paths plan

(1) The local authority shall—
(a) at such times as they consider appropriate; and
(b) on Ministers requiring them to do so,
review the plan adopted under section 18 above (or that plan as amended under this section).

(2) Where, following a review of a plan under subsection (1) above, the local authority consider that—
(a) a core path should be removed from the plan; or
(b) the line of a core path, or part of that line, should be diverted,
the authority may amend the plan by removing the core path from the plan or, as the case may be, by diverting the line of the core path on the plan.

(3) The local authority may not amend the plan under subsection (2) above unless they are satisfied that it is expedient so to do having regard to—
(a) the extent to which it appears to them that persons would, but for the amendment, be likely to exercise access rights using the core path; and
(b) the effect which the amendment of the plan would have as respects land served by the core path.

(4) Where the local authority stop up, or divert, a core path by order under section 208 of the Town and Country Planning (Scotland) Act 1997 (c. 8) they shall amend their plan accordingly.

(5) Subsection (8) of section 18 above applies in relation to the amendment of a plan under subsection (2) or (4) above as it applies in relation to the adoption of a plan under that section.

(6) Where, following a review of a plan under subsection (1) above, the local authority consider that the plan should be amended so as to include a further path, waterway or other means of crossing land such as is mentioned in section 17(2) above, the authority shall draw up an amended plan.

(7) Sections 17(3) and (4) and 18 above apply in relation to a plan drawn up under subsection (6) above as they apply to a plan drawn up under section 17(1) above.

21 Delineation by agreement of paths in land in respect of which access rights exercisable

(1) The local authority may enter an agreement (a "path agreement") with a person having the necessary power for the delineation and maintenance or, as the case may be, for the delineation, creation and maintenance of a path within land in respect of which access rights are exercisable.

(2) A path agreement shall be on such terms and conditions as to payment or otherwise as may be specified in it.

22 Compulsory powers to delineate paths in land in respect of which access rights exercisable

(1) Where, in the circumstances set out in subsection (2) below, it appears to the local authority that, having regard to the rights and interests of the owner of land in respect

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of which access rights are exercisable and persons likely to exercise these rights, it is expedient to delineate a path within that land, the authority may, by order (a "path order"), do so.

(2) These circumstances are that it appears to the local authority to be impracticable to delineate the path by means of a path agreement.

(3) Where the local authority make a path order—
   (a) delineating an existing path, they have the duty of maintaining it;
   (b) delineating a new path, they have the duty of creating and maintaining it.

(4) Regard may be had, in determining whether a local authority has control of a path for the purposes of the Occupiers' Liability (Scotland) Act 1960 (c. 30), to the duties imposed by subsection (3) above.

(5) A path order may be revoked by the local authority.

(6) A path order shall be in such form as is prescribed but shall contain a map showing the delineation of the path.

(7) Where access rights—
   (a) have, by virtue of any provision of this Part of this Act, not been exercisable over any land consisting of a public path created under sections 30 to 36 of the Countryside (Scotland) Act 1967 (c. 86); but
   (b) become exercisable over that land,

   the public path creation agreement or the public path creation order or public path diversion order by which the public path was created shall, for the purposes of the exercise of access rights, be treated as a path agreement or, as the case may be, a path order.

(8) Schedule 1 to this Act has effect for the purposes of providing further as to path orders.

(9) In section 28 (interpretation) of the Land Registration (Scotland) Act 1979 (c. 33) in paragraph (g) of the definition of "overriding interest" (which paragraph provides that public rights of way etc. are overriding interests) there is inserted at the end "or in respect of the exercise of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2) by way of a path delineated in a path order made under section 22 of that Act".

23 Ploughing etc.

(1) Where land is, in accordance with good husbandry, being ploughed or having its surface otherwise disturbed and it is convenient to plough, or otherwise disturb the surface of, a core path or a right of way which forms part of the land, nothing in this Part of this Act prevents that path or, as the case may be, right of way from being ploughed or from having its surface otherwise disturbed.

(2) The owner of land being a path or, as the case may be, right of way which has been ploughed or which has had its surface otherwise disturbed in accordance with subsection (1) above shall, however, within the period of 14 days beginning on the day on which the path or, as the case may be, right of way is ploughed or has its surface otherwise disturbed or such longer period as the local authority may allow, reinstate the path or, as the case may be, right of way.

(3) An owner who fails to comply with subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If the owner fails to comply with subsection (2) above, the local authority may, after giving the owner 14 days' notice of their intention to do so—
   (a) take all necessary steps to reinstate the path or, as the case may be, right of way; and
   (b) recover from the owner their reasonable expenses in doing so.

(5) Nothing in this section prejudices any limitation or condition having effect otherwise.

24 Rangers

(1) The local authority may appoint persons to act as rangers in relation to any land in respect of which access rights are exercisable.

(2) The purposes for which such rangers may be so appointed are—
   (a) to advise and assist the owner of the land and other members of the public as to any matter relating to the exercise of access rights in respect of the land; and
   (b) to perform such other duties in relation to the exercise of those rights in respect of that land as the local authority determine.

(3) A person appointed under this section as a ranger may, for the purpose of exercising any function conferred by or under subsection (2) above, enter any land in respect of which access rights are exercisable.

25 Local access forums

(1) Each local authority shall establish for its area a body, to be known as the "local access forum", to carry out the functions set out in subsection (2) below.

(2) Those functions are—
   (a) to advise the local authority and any other person or body consulting the forum on matters having to do with the exercise of access rights, the existence and delineation of rights of way or the drawing up and adoption of a plan for a system of core paths under sections 17 and 18 above;
   (b) to offer and, where the offer is accepted, to give assistance to the parties to any dispute about—
      (i) the exercise of access rights;
      (ii) the existence and delineation of rights of way;
      (iii) the drawing up and adoption of the plan referred to in paragraph (a) above; or
      (iv) the use of core paths,

      towards the resolution of the dispute.

(3) A local access forum consists of such persons as are appointed to it by the local authority.

(4) The matters to which the local authority have regard when making appointments to the local access forum shall include—
   (a) ensuring reasonable representation in the forum of—

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(i) bodies representative of persons with an interest in any of the matters mentioned in subsection (2)(b)(i) to (iv) above;

(ii) persons having such an interest;

(iii) bodies representative of the owners of land in respect of which access rights are exercisable or in which there is a core path; and

(iv) owners of such land, and

(b) ensuring a reasonable balance among those mentioned in sub-paragraphs (i) to (iv) of paragraph (a) above.

(5) The local authority may appoint one or more of its own members to a local access forum.

(6) More than one local access forum may be established for the area of a local authority.

(7) The local authority may pay to members of the local access forum such expenses and allowances as the local authority determine.

(8) Ministers may give guidance to local authorities to assist them in the performance of their functions under this section.

26 Power of entry

(1) Any person authorised by the local authority to do so may enter any land for a purpose connected with the exercise or proposed exercise of any of the authority's functions under this Part of this Act.

(2) A person so authorised may, subject to subsection (3) below, enter land only—

(a) at a reasonable time; and

(b) on giving reasonable notice to the owner of the land.

(3) Subsection (2) above does not apply—

(a) in case of emergency; or

(b) in relation to the exercise by a local authority of any of their powers under sections 15(1)(a) and (4) and 19 above in relation to land which is a core path.

(4) A person may, on entering any land by virtue of subsection (1) above, take onto the land any machinery, other equipment or materials required for the purpose for which the power of entry is being exercised.

27 Guidance

(1) Ministers may give guidance to local authorities on the performance of any of their functions under this Part of this Act.

(2) Such guidance may be given generally or to a particular local authority.

(3) A local authority to which such guidance is given shall have regard to it.

(4) Before giving such guidance, Ministers shall—

(a) consult each (or the) local authority to whom they propose to give it; and

(b) lay a draft of the proposed guidance before the Scottish Parliament;

and the guidance shall not be given until after a period of 40 days beginning with the day on which the draft was so laid.

(5) If, within that period, the Parliament resolves that the guidance proposed should not be given, Ministers shall not give it.

(6) In calculating any period of 40 days for the purposes of subsection (4) or (5) above, no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.

CHAPTER 6

GENERAL AND MISCELLANEOUS PROVISIONS

28 Judicial determination of existence and extent of access rights and rights of way

(1) It is competent, on summary application made to the sheriff, for the sheriff—

(a) to declare that the land specified in the application is or, as the case may be, is not land in respect of which access rights are exercisable;

(b) to declare—

(i) whether a person who has exercised or purported to exercise access rights has exercised those rights responsibly for the purposes of section 2 above;

(ii) whether the owner of land in respect of which access rights are exercisable is using, managing or conducting the ownership of the land in a way which is, for the purposes of section 3 above, responsible.

(2) It is competent, on summary application made to the sheriff, for the sheriff to declare whether a path, bridleway or other means of crossing land specified in the application is, or is not, a right of way by foot, horseback, pedal cycle or any combination of those.

(3) The proceedings for a declaration under subsection (1) or (2) above are those for an action of declarator initiated by summary application to the sheriff.

(4) A summary application for a declaration shall be served on the local authority.

(5) The local authority are entitled to be a party to proceedings for a declaration.

(6) Where the person seeking a declaration is the owner of the land, it is not necessary to serve the application on any person but the local authority.

(7) In any other case, the person seeking the declaration shall serve the application on the owner of the land.

(8) Rules of court shall provide—

(a) for the circumstances in which (including any time periods within which) a summary application may be made for the purposes of this section;

(b) for public notice of the making of summary applications for the purposes of this section;

(c) for enabling persons interested in the exercise of access rights over specific land or, as the case may be, in the existence of a right of way over specific land and persons or bodies representative of such persons to be parties to the proceedings;

(d) for limiting the number of persons and bodies who may be such parties.

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(9) This section is without prejudice to any remedy otherwise available in respect of rights conferred and duties imposed by or under this Part of this Act.

29 Powers to protect natural and cultural heritage etc.

(1) Scottish Natural Heritage may put up and maintain notices for the purposes of protecting the natural heritage of land in respect of which access rights are exercisable.

(2) The Scottish Ministers may put up and maintain notices for the purposes of protecting the cultural heritage of land in respect of which access rights are exercisable.

(3) Any notice put up under subsection (1) or (2) above may warn persons of any adverse effect that their presence on the land or any activities they might conduct there might have on the natural or, as the case may be, cultural heritage sought to be protected.

30 Existing byelaws providing for public access to land

It is the duty of every person, body or authority having power under any enactment to make byelaws which may provide for or relate to public access to land in respect of which access rights are exercisable and which is owned or managed by that person, body or authority—

(a) within 2 years of the coming into force of this section, to review those of its byelaws which so provide or relate and are in force at the time of the review; and

(b) to modify any of those byelaws which are inconsistent with the provisions of this Act (including any made under it) as they apply to that land so as to make them consistent.

31 Application of sections 14 and 15 to rights of way

Sections 14 and 15 above apply in relation to rights of way by foot, horseback, pedal cycle or any combination of those as they apply in relation to access rights.

32 Interpretation of Part 1

In this Part of this Act—

"Access Code" means the Scottish Outdoor Access Code issued by Scottish Natural Heritage under section 10 above;

"canals" means inland waterways within the meaning of section 92 (interpretation) of the Transport Act 1962 (c. 46);

"core path" means a path, waterway or any other means of crossing land such as is mentioned in section 17(2) above which is set out in a plan adopted under section 18 above or, as the case may be, such a plan as amended under section 20 above;

"cultural heritage" includes structures and other remains resulting from human activity of all periods, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes;

"inland waters" means any inland, non-tidal loch, river (to the extent that it is non-tidal), lake or reservoir, whether natural or artificial and whether navigable or not, and includes the bed and the shores or banks thereof;

"land" includes—

(a) bridges and other structures built on or over land;

(b) inland waters;

(c) canals; and

(d) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides;

"local authority" in relation to specific land in respect of which access rights are or would, but for a provision of or order made under this Act, be exercisable means—

(a) where the land is, on the day on which this section comes into force, within an area designated as a National Park under the National Parks (Scotland) Act 2000 (asp 10), the National Park authority for that National Park; and

(b) in any other case, the council (being a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39)) whose area includes that land;

"natural heritage" includes the flora and fauna of land, its geological and physiographical features and its natural beauty and amenity;

"owner", in relation to land, means—

(a) the owner of the land; and

(b) where the owner is not in natural possession of the land, the person who is entitled to such natural possession;

"statutory undertaker" means—

(a) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of hydraulic power;

(b) the operator of a **[**[F3]electronic communications code network**]**;

(c) an airport operator (within the meaning of the Airports Act 1986 (c. 31)) operating an airport to which Part V of that Act applies;

(d) a gas transporter, within the meaning of Part I of the Gas Act 1986 (c. 44);

(e) Scottish Water;

(f) a holder of a licence under section 6(1) of the Electricity Act 1989 (c. 29);

(g) the Civil Aviation Authority or a holder of a licence under Chapter I of Part I of the Transport Act 2000 (c. 38) (to the extent that the person holding the licence is carrying out activities authorised by it);

(h) the Scottish Environment Protection Agency; or

(i) a universal postal service provider within the meaning of the Postal Services Act 2000 (c. 26);

and "undertaking" means the undertaking of such a statutory undertaker; and

[F4] . . . . . .

Textual Amendments

F3 Words in s. 32 substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 3(1), **Sch. 1 para. 15(2)**

F4 S. 32: definitions of "telecommunications code system" and "operator" repealed (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), **art. 3(2)**, {Sch. 2 Table 1}

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Modifications etc. (not altering text)

C2 S. 32: definition modified (2.10.2010) by The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 Modification Order 2010 (S.S.I. 2010/348), **art. 3**

PART 2

THE COMMUNITY RIGHT TO BUY

CHAPTER 1

GENERAL EXTENT OF COMMUNITY RIGHT TO BUY

33 Registrable land

(1) The land in which a community interest may be registered under this Part of this Act ("registrable land") is any land other than excluded land.

(2) In subsection (1) above, "excluded land" means land described as such in an order made by Ministers.

(3) In determining what land is to be so described, Ministers—

(a) may have regard to factors relating to population and to such other factors associated with or characteristic of the land as they think fit; and

(b) shall secure that registrable land is land appearing to them to be rural.

(4) The description of excluded land in an order under this section shall consist of or include—

(a) a map showing the boundaries of that land; or

(b) a reference to such a map.

(5) Where that description consists of or includes a reference to a map which does not form part of the order, Ministers shall make copies of the map available for public inspection at such times and places as they think fit.

(6) Registrable land includes land consisting of—

(a) salmon fishings; or

(b) mineral rights,

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

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

34 Community bodies

(1) A community body is, subject to subsection (4) below, a company limited by guarantee the memorandum and articles of association of which include the following—

(a) a definition of the community to which the company relates;

(b) provision enabling the company to exercise the right to buy land under this Part of this Act;

(c) provision that the company must have not fewer than 20 members;

(d) provision that the majority of the members of the company is to consist of members of the community;

(e) provision whereby the members of the company who consist of members of the community have control of the company;

(f) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts;

(g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community; and

(h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part of this Act) passes—

(i) to such other community body or crofting community body as may be approved by Ministers; or

(ii) if no other community body or crofting community body is so approved, to Ministers or to such charity as Ministers may direct.

(2) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1)(c) above in relation to any body they may specify.

(3) In subsection (1) above, "company limited by guarantee" has the same meaning as in section 1(2)(b) of the Companies Act 1985 (c. 6).

(4) A body is not a community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(5) Unless Ministers otherwise direct, a community—

(a) shall be defined for the purposes of subsection (1)(a) above by reference to a postcode unit or postcode units; and

(b) shall comprise the persons from time to time—

(i) resident in that postcode unit or in one of those postcode units; and

(ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units (or part of it or them).

(6) In subsection (5) above, "postcode unit" means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.

(7) The memorandum and articles of a company which is a community body may, notwithstanding the generality of paragraph (h) of subsection (1) above, provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.

(8) In this section, "charity" means a body **[**[F5]entered in the Scottish Charity Register**]**.

Textual Amendments

F5 Words in s. 34(8) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10) ss. 104, 107(2), {Sch. 4 para. 13(a)}; S.S.I. 2006/189, **art. 2**, Sch.

35 Provisions supplementary to section 34

(1) A community body which has registered a community interest in or bought land under this Part of this Act shall not, for as long as—

(a) the interest remains registered; or, as the case may be,

(b) the land remains in its ownership,

modify its memorandum or articles of association without Ministers' consent in writing.

(2) If Ministers are satisfied that a body which has registered a community interest is no longer a community body, they may direct the Keeper to delete that interest from the Register.

(3) If Ministers are satisfied that a body which has, under this Part of this Act, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.

36 Register of Community Interests in Land

(1) The Keeper shall set up and keep a register, to be known as the Register of Community Interests in Land (the "Register").

(2) The Register shall be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each community interest registered in it—

(a) the name and address of the registered office of the company which constitutes the community body which has registered the interest;

(b) a copy of the application for registration under section 37 below;

(c) a copy of the notice of prohibition under section 37(5)(e) below;

(d) a copy of the notice sent under section 37(17) below of Ministers' decision that the interest is to be entered in the Register;

(e) the date of registration;

(f) a description of the land, including maps, plans or other drawings (prepared to such specifications as are prescribed);

(g) the date when the registration will, under section 44 below, cease to have effect;

(h) the date of any deletion of the interest under section 45 or 54 below;

(i) a copy of any notification under section 48 below;

(j) a copy of any notice sent under section 49 below;

(k) a copy of any confirmation received in pursuance of that section;

(l) a copy of any notice sent under section 50(3) below;

(m) a copy of any decision as to consent given under section 51 below;

(n) a copy of any notice given under section 54 below;

(o) in the case of each copy document referred to in this subsection, the date of the original;

(p) such other information as Ministers consider appropriate.

(3) If, however, the community body registering an interest requires that any such information or document relating to that interest and within subsection (4) below as is specified in the requirement be withheld from public inspection, that information or document shall be kept by or on behalf of Ministers separately from and not entered in the Register.

(4) Information or a document is within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land in which the interest is registered to be put to a particular use.

(5) Nothing in subsection (3) or (4) above obliges an applicant community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (4) above.

(6) Ministers may by order modify paragraphs (a) to (o) of subsection (2) or subsections (3) or (4) above.

(7) The Keeper shall ensure—

(a) that the Register is, at all reasonable times, available for public inspection free of charge;

(b) that members of the public are given facilities for getting copies of entries in the Register on payment of such charges as may be prescribed; and

(c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.

(8) An extract so certified is sufficient evidence of the original.

(9) In this Part of this Act "the Keeper" means—

(a) the Keeper of the Registers of Scotland; or

(b) such other person as Ministers may appoint to carry out the Keeper's functions under this Part of the Act.

(10) Different persons may be so appointed for different purposes.

CHAPTER 2

REGISTRATION OF INTERESTS

37 Registration of interest in land

(1) A community interest in land may be registered only upon an application made by a community body to Ministers in the prescribed form and accompanied by information of the prescribed kind, including information (provided, where appropriate, by or by reference to maps or drawings) about the location and boundaries of the land.

(2) Where there is a standard security over an interest in any land to which the application relates the community body shall, at the same time as it applies, provide Ministers with notice, in the prescribed form, of that fact.

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(3) Where an applicant community body satisfies Ministers that the owner of the land in which a community interest is sought to be registered or, as the case may be, a creditor in a standard security over any part of that land is unknown or cannot be found, Ministers shall be relieved of their duties under subsections (5) to (10), and paragraphs (b) and (c) of subsection (17), below in so far as those duties relate to the owner or, as the case may be, creditor.

(4) Ministers shall not be satisfied under subsection (3) above unless the community body has given public notice of the proposed application by—

(a) placing an advertisement, in two consecutive weeks, in a local newspaper circulating in the area where the land in which a community interest is sought is situated; and

(b) affixing a conspicuous notice in the prescribed form to a part of that land.

(5) On receipt of an application, Ministers shall—

(a) send a copy of the application and the accompanying information to the owner of the land and to any creditor in a standard security over an interest in the land;

(b) invite the owner of the land to send them, so as to be received not later than 21 days after the sending of the invitation, views in writing on the application;

(c) where there is a standard security over an interest in any land to which the application relates, invite the creditor in the security—

(i) to notify the community body and Ministers, within 21 days of receipt of the invitation, if any of the circumstances set out in subsection (6) below has arisen (or arises within 21 days of receipt of the invitation); and

(ii) if such notice is given, to provide Ministers, within that time, with the creditor's views in writing on the application;

(d) send a copy of the invitation under paragraph (b) above and a copy of any invitation under paragraph (c) above to the community body; and

(e) by notice sent to—

(i) the owner of the land; and

(ii) any creditor in a standard security over an interest in the land,

prohibit the owner and any such creditor from taking, during the period beginning with the date on which the owner or, as the case may be, the creditor receives the notice and ending on the date on which Ministers determine whether an interest is to be registered, any action which, if the interest had been registered, would be prohibited under section 40(1) below.

(6) The circumstances referred to in subsection (5)(c) above are that—

(a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) in relation to the land in which the community body is seeking to register an interest or any part of that land and that notice has not been complied with;

(b) a notice of default served by the creditor under section 21 of that Act in relation to that land or any part of that land has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court;

(c) where that person has so objected, the court has upheld or varied the notice of default; and

(d) the court has granted the creditor a warrant under section 24 of that Act in relation to that land or any part of that land.

(7) Ministers shall send a copy of—

(a) each application received by them, together with a copy of the accompanying information;

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

to the Keeper.

(8) A transfer in breach of a prohibition imposed under subsection (5)(e) above is of no effect.

(9) Ministers shall—

(a) send a copy of any timeous response to an invitation given under subsection (5)(b) or (c) above to the community body; and

(b) invite it to send them, so as to be received not later than 21 days after the invitation under this subsection, its views in writing on that response.

(10) Ministers shall take any views timeously sent to them under this section into account when considering whether the community interest to which those views relate should be entered in the Register.

(11) Ministers shall decline to consider an application that—

(a) does not comply with the requirements of or imposed under this section;

(b) is otherwise incomplete;

(c) discloses that any land to which it relates is not registrable land; or

(d) otherwise indicates that it is one which Ministers would be bound to reject;

and Ministers shall be relieved of their duties under subsections (5) to (10) above, and paragraphs (b) and (c) of subsection (17) below, in relation to such an application.

(12) Declinature of an application is, for the purposes of subsection (17) below, to be regarded as a decision not to enter the community interest in the Register.

(13) More than one community interest may be registered in respect of the same land.

(14) A community body may, subject to subsection (15) below, register an interest in more than one holding of land.

(15) An application under subsection (1) above may relate to only one holding of land.

(16) In subsections (14) and (15) above, a "holding" of land is land in the ownership of one person or in common or joint ownership.

(17) Ministers shall, within 63 days of receiving an application under subsection (1) above, send notice of their decision whether or not the community interest is to be entered in the Register together with a statement of their reasons—

(a) to the applicant community body;

(b) to the owner of the land; and

(c) where a creditor in a standard security has notified Ministers timeously in response to an invitation given under subsection (5)(c)(i) above, to the creditor.

(18) A notice under subsection (17) above shall—

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(a) contain information about the effect of registration of a community interest or, as the case may be, of Ministers' decision that such an interest is not to be entered in the Register and about the rights of appeal under section 61 below; and

(b) be in the prescribed form.

(19) Any failure to comply with the time limit specified in subsection (17) above does not affect the validity of anything done under this section.

(20) Where Ministers decide that a community interest is to be entered in the Register they shall direct the Keeper to so enter the interest with effect from the date on which Ministers made the decision.

38 Criteria for registration

(1) Ministers shall not decide that a community interest is to be entered in the Register unless they are satisfied—

(a) that the land is registrable land;

(b) that—

(i) a significant number of the members of the community defined under section 34(1)(a) above have a substantial connection with the land; or

(ii) the land is sufficiently near to land with which those members of that community have a substantial connection and that its acquisition by the community body is compatible with furthering the achievement of sustainable development;

(c) where the land is salmon fishings or mineral rights, that the community body—

(i) has registered or is registering an interest in; or

(ii) has acquired or is acquiring,

other land containing or contiguous to the waters in which those salmon fishings exist or the land in which those mineral rights are exigible;

(d) that there is within the community a level of support sufficient to justify such registration; and

(e) that it is in the public interest that the community interest be so registered.

(2) For the purposes of subsection (1)(d) above, Ministers—

(a) shall regard an indication of the approval of one tenth or more of the members of the community; and

(b) may regard an indication of the approval of less than one tenth of those members,

as signifying a sufficient level of support.

(3) References in this section to the community are, as respects a community body, references to the community defined in relation to that body under section 34(1)(a) above.

39 Procedure for late applications

(1) This section applies in relation to an application to register a community interest in land—

(a) where the application is received by Ministers—

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(i) after the date on which the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land has taken action which, if a community interest had been registered, would be prohibited under section 40(1) below; and

(ii) before the date on which—

(A) missives for the sale and purchase of the land are concluded; or

(B) an option to acquire the land is conferred,

in pursuance of that action; or

(b) where another community body has registered an interest in the land, where the application is received by Ministers—

(i) after the date on which the owner of the land or, as the case may be, such a creditor has, under section 48(1) below, notified that community body that a transfer is proposed; and

(ii) before Ministers have consented, under section 51(1) below, to a transfer to that community body.

(2) Where this section applies in relation to an application—

(a) the owner of the land or, as the case may be, such a creditor shall, on receipt of an invitation under section 37 above, inform Ministers that this section applies; and

(b) the procedure for registering community interests in land set out in section 37 above is, for the purposes of the application, subject to the following modifications—

(i) paragraph (b) of subsection (9) does not apply; and

(ii) in subsection (17), for “63” there is substituted “30”.

(3) Where this section applies in relation to an application, Ministers shall not decide that a community interest is to be entered in the Register unless they are (additionally to the matters as to which they are to be satisfied under section 38 above) satisfied—

(a) that there were good reasons why the community body did not secure the receipt of an application before the owner of the land or, as the case may be, the creditor took the action, or gave the notice, such as is mentioned in subsection (1) above;

(b) that the level of support within the community for such registration is significantly greater than that which Ministers would, by virtue of subsection (2) of that section, have considered sufficient for the purposes of subsection (1)(d) of that section had the application been received before that action was taken or, as the case may be, the notice was given; and

(c) that the factors bearing on whether it is or is not in the public interest that the community interest be registered are strongly indicative that it is.

(4) Where a community interest in land is registered in pursuance of an application in relation to which this section applies—

(a) the owner of the land is, for the purposes of this Part of this Act (other than section 59(4)), deemed to have, on the date on which that interest is so registered, given notice under section 48(1) below that a transfer is proposed;

(b) section 49 below does not apply in so far as it relates to that interest; and

(c) for the purposes of sections 55(2) and (4), 56(3), 59(1) and 65(1)(a) below, the community body is deemed to have sent the confirmation which

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Ministers would, had section 49 below applied, have required to seek under subsection (2)(a) of that section on the date on which the interest is registered.

(5) Where, but for the provision made by subsection (1)(a)(ii) above, this section would apply in relation to an application to register a community interest in land Ministers—
  (a) shall decline to consider the application; and
  (b) shall be relieved of their duties under subsections (5) to (10), and paragraphs (b) and (c) of subsection (17), of section 37 above in relation to that application.

40 Effect of registration

(1) For so long as a community interest in land is registered the owner of the land, and any creditor in a standard security having a right to sell the land, is prohibited from—
  (a) transferring that land (or any land of which that land forms part); or
  (b) taking any action with a view to the transfer of that land (or any land of which that land forms part),

except in accordance with this Part of this Act.

(2) A transfer in breach of subsection (1)(a) above is of no effect.

(3) Subsection (1) above operates so as to prohibit transfers of, or other actions in relation to, land in respect of which no community interest has been registered only where that transfer, or action, also relates to land in respect of which a community interest has been registered.

(4) Subsection (1) above does not apply in relation to—
  (a) a transfer otherwise than for value;
  (b) a transfer in implement or pursuance of an order of a court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) or a decree in an action for the division and sale of land);
  (c) a transfer between spouses **[**[F6]or civil partners**]** in pursuance of an arrangement between them entered into at any time after they have ceased living together;
  (d) a transfer of croft land to the crofter tenanting it;
  (e) a transfer between companies in the same group;
  (f) a transfer to a statutory undertaker for the purpose of carrying on their undertaking;
  (g) a transfer—
    (i) implementing the compulsory acquisition of the land under an enactment;
    (ii) by agreement, of land which could have been acquired compulsorily under an enactment;
    (iii) implementing any right conferred by or under this Part or Part 3 of this Act;
    (iv) implementing missives for the sale and purchase of land concluded, or an option to acquire land which existed, on a date on which the Register did not contain a community interest, or an application to register a community interest, in the land;
    (v) conveying a house to a person who has purchased it in pursuance of the tenant's right to buy it under Part III of the Housing (Scotland) Act 1987 (c. 26) ("the 1987 Act");

(vi) which requires, or which but for the provisions of section 14 of the 1987 Act would require, the consent of Ministers under subsection (5) or (7) of section 12 of the 1987 Act;

(vii) under section 65 of the Housing (Scotland) Act 2001 (asp 10); or

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

(h) a transfer of land in consequence of—

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

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

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

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

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

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

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

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

Textual Amendments

F6 Words in s. 40(4)(c) inserted (5.12.2005) by The Civil Partnership Act 2004 (Consequential Amendments) (Scotland) Order 2005 (S.S.I. 2003/623), **art. 23**

41 Provisions supplementary to and explanatory of section 40

(1) For the purposes of section 40(4)(e) above, companies are in the same group if they are, or are included in a number of, companies which, by virtue of section 170 of the Taxation of Chargeable Gains Act 1992 (c. 12), together form a group for the purposes of sections 171 to 181 of that Act.

(2) References in subsection (5) of section 40 above to the owner of land include references to the person in whom it has vested for the purposes of any such enactment as is mentioned in subsection (4)(g)(viii) of that section.

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42 Power to modify sections 40(4) and (5) and 41

Ministers may by order modify sections 40(4) and (5) and 41 above or any provision thereof.

43 Anti-avoidance provisions

(1) A transfer such as is mentioned in paragraph (a), (e) or (h) of subsection (4) of section 40 above is a transfer to which subsection (1) of that section applies if it is or forms part of a scheme or arrangement or is one of a series the main purpose or effect, or one of the main purposes or effects, of which is the avoidance of the requirements or consequences of this Part of this Act.

(2) Where land in respect of which a community interest is registered is being transferred otherwise than by way of a transfer to the community body which registered that interest, the transferor shall incorporate in the deed giving effect to the transfer a declaration—

(a) specifying which provision of subsection (4) of section 40 above operates so as to make the transfer one to which subsection (1) of that section does not apply; and

(b) where the provision so specified is paragraph (a), (e) or (h) of that subsection, stating that the transfer does not form part of a scheme or arrangement, and is not one of a series, such as is mentioned in subsection (1) above.

44 Duration and renewal of registration

(1) A registered community interest has, subject to subsection (4) below, effect for a period of five years from the date when it was registered.

(2) A community body which has registered a community interest may, at any time within six months before the expiry of that period, apply under section 37 above to re register the interest.

(3) On such an application, Ministers may, subject to section 38 above, direct the Keeper to re-enter the interest in the Register.

(4) An interest so re registered continues to have effect as a registered community interest for a period of five years from the date on which the interest would otherwise have ceased to have effect under this section.

(5) A registered community interest does not cease to have effect on completion of a transfer such as is mentioned in subsection (4) of section 40 above.

45 Deletion of community interest in land

(1) If Ministers are satisfied that there has, since the date on which they decided that a community interest should be registered, been a change in any matters to the extent that, if the application to register that community interest were made afresh, they would decide that the interest is not to be entered in the Register, they shall direct the Keeper to delete that interest.

(2) Ministers shall not, however, do so without first giving the community body which registered the community interest and the owner of the land an opportunity to state views on the proposed deletion.

46 Re-registration of community interest

Nothing in section 44 or 45 above prevents a community body from applying to register an interest in land in respect of which, or in respect of part of which, it previously had an interest which has—

(a) ceased to have effect under section 44(1) or (4) above; or

(b) been deleted under section 45(1) above.

CHAPTER 3

ACTIVATION OF RIGHT TO BUY

47 Activation of right to buy

(1) The right to buy land in which a community interest has been registered arises and may be exercised when the owner of the land or, as the case may be, a creditor in a standard security with a right to sell the land gives, or is deemed to have given, notice under section 48(1) below that a transfer is proposed.

(2) That right, however, is exercisable only in relation to particular holdings of land; accordingly, references in this and the following sections of this Part of this Act to land as respects which the right to buy is being exercised, is sought to be exercised or has been exercised are references to such holdings.

(3) Subsection (1) above shall not operate so as to provide a community body with a right to buy any land in respect of which it has not registered an interest in accordance with this Part of this Act.

(4) In subsection (2) above, "holding" has the same meaning as in subsections (14) and (15) of section 37 above.

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

(1) Where the owner of land in respect of which a community interest is registered or, as the case may be, a creditor in a standard security with a right to sell such land proposes to transfer that land (or any land of which that land forms part) by way of a transfer under this Part of this Act, the owner or, as the case may be, such a creditor shall notify that fact to—

(a) the community body, or bodies, in respect of which the interest is registered; and

(b) Ministers.

(2) Notification under subsection (1) above shall be given in such form and otherwise in accordance with such provisions as are prescribed.

(3) Subsection (1) above operates so as to require notification of a proposal to transfer land in respect of which no community interest has been registered only where that proposed transfer also relates to land in respect of which a community interest has been registered.

(4) Where notification under subsection (1) above is given by a creditor in a standard security with a right to sell the land, references in the following sections of this Part of this Act to the owner of the land shall, for the purposes of determining the procedure

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

49 Procedure following receipt of notice under section 48

(1) On receipt of notification under section 48 above from an owner of land, Ministers shall direct the Keeper to enter particulars of the notification in the Register.

(2) Not later than 7 days after such receipt Ministers shall—
- (a) send to the community body which has registered the interest in the land a notice in the prescribed form seeking its confirmation in writing that it will exercise its right to buy the land; and
- (b) send to the owner of the land a notice in the prescribed form narrating their compliance with paragraph (a) above.

(3) A notice under subsection (2)(a) above shall specify the date referred to in and narrate the effect of subsection (4) below.

(4) If, by the date specified in the notice, being a date not later than 30 days after it was sent, the community body has not caused its confirmation to be received by Ministers, Ministers shall be deemed to have received written notice from the community body under subsection (1) of section 54 below that it will not exercise its right to buy the land and subsections (2) to (4) of that section shall apply accordingly.

(5) Ministers shall send a copy of—
- (a) the notice sent under subsection (2)(a) above; and
- (b) any confirmation received by them in pursuance of this section,

to the owner of the land and to the Keeper.

(6) Any failure to comply with the time limit specified in subsection (2) above does not affect the validity of anything done under this section.

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

(1) If, on an application made to it by a community body which has registered an interest in land, the Lands Tribunal determine that—
- (a) the owner of that land, or a creditor in a standard security with a right to sell that land, has acted in breach of a prohibition under—
  - (i) subsection (5)(e) of section 37 above; or
  - (ii) section 40(1) above; and
- (b) each of the conditions set out in subsection (2) below is met,

the Tribunal shall notify Ministers of that fact.

(2) Those conditions are—
- (a) that the action referred to in subsection (1)(a) above occurred during the period of ten years immediately prior to the date on which the application was made;
- (b) that the land has, during such period, not ceased to be registrable land;
- (c) that the community interest in the land which had been registered, or applied for, before the action referred to in subsection (1)(a) above remains in effect or another has, since then, been registered; and
- (d) that Ministers have not, on or after the date on which the action referred to in subsection (1)(a) above occurred, received, or been deemed to have received,

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

(3) On receipt of notice under subsection (1) above Ministers shall—

(a) give notice of the Tribunal's determination to each community body which—

(i) had registered, or had applied to register, an interest in the land on the date on which the action referred to in subsection (1)(a) above occurred; and

(ii) has such an interest on the date on which the notice is served; and

(b) send a copy of the notice to the owner of the land and to the Keeper.

(4) A notice under subsection (3) above shall narrate the effect of subsection (5) below.

(5) Where notice is given by Ministers under subsection (3) above the owner of the land is, for the purposes of this Part of this Act, deemed to have, on the date on which notice was given by Ministers, given notice under section 48(1) above that a transfer of the land is proposed.

CHAPTER 4

PROCEDURE AFTER ACTIVATION OF RIGHT TO BUY

51 Exercise of right to buy: approval of community and consent of Ministers

(1) A community body shall not proceed to buy land under this Part of this Act without—

(a) the approval of the community; and

(b) the consent of Ministers.

(2) The community are to be taken as having given their approval for the purposes of subsections (1) above and (3) below if Ministers are satisfied—

(a) that—

(i) at least half of the members of the community, as defined for the purposes of section 34(1)(a) above, have voted in a ballot conducted by the community body on the question whether the community body should buy the land; or

(ii) where less than half of the members of the community have so voted, the proportion which did vote is, in the circumstances, sufficient to justify the community body's proceeding to buy the land; and

(b) that the majority of those voting have voted in favour of the proposition that the community body buy the land.

(3) Ministers shall not consent for the purposes of subsection (1) above unless the community have given their approval and Ministers are satisfied—

(a) that the land is registrable land;

(b) that the community body continues to comply with the provisions of section 34 above;

(c) that what the community body proposes to do with the land is compatible with furthering the achievement of sustainable development;

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

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(e) that there has not, since the date on which they decided the community body's interest should be registered, been a change in any matters to the extent that, if the application to register the community interest were made afresh, they would decide that the interest is not to be entered in the Register.

(4) A community body may require Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to Ministers for the purposes of subsection (3) above.

(5) Ministers shall, within the time limit specified in subsection (6) below, send notice of their decision as to consent and their reasons for it in writing to the community body and to the owner of the land and shall direct the Keeper to enter a record of that decision in the Register.

(6) That time limit is—

(a) where one community body has confirmed that it will exercise its right to buy the land, the 21 days following receipt of notification, under section 52(3) below, of the result of the ballot conducted by the body; or

(b) where two or more community bodies have confirmed that they will exercise their right to buy the land, the 21 days following receipt of such notification in respect of the last of the ballots conducted by those bodies.

(7) Any failure to comply with the time limit specified in subsection (6) above does not affect the validity of anything done under this section.

52 Ballot procedure

(1) The ballot shall be conducted as prescribed; and the provisions prescribed shall include provision for the ascertainment and publication of the number of persons eligible to vote in the ballot, the number who did so and the numbers of valid votes respectively cast for and against the proposition mentioned in section 51(2)(b) above.

(2) If the ballot is not so conducted, the right to buy of the community body conducting it is extinguished.

(3) The community body which conducts a ballot shall, within the period set out in subsection (4) below and in the prescribed form of return, notify—

(a) the result;

(b) the number of persons eligible to vote;

(c) the number who voted; and

(d) the number who voted in favour of the proposition mentioned in section 51(2)(b) above,

to Ministers.

(4) The period referred to in subsection (3) above is the period of 28 days beginning with the date—

(a) when the valuer notified the community body under section 60(2) below of the assessed value of the land and any moveable property; or

(b) where the price assessed by the appointed valuer is the subject of appeal, the date on which the price is determined on appeal as mentioned in subsection (2) of section 56 below or settled as mentioned in subsection (2)(a) of that section.

53 Provisions supplementary to section 51: salmon fishings and minerals

Where the land in which a community interest has been registered is salmon fishings or mineral rights, Ministers shall not consent under section 51(1) above to the exercise of the right to buy unless they are (additionally to the matters as to which they are to be satisfied under section 51(3) above) satisfied that—

(a) the salmon fishings are in waters which are within or contiguous to;

(b) where in separate ownership from the land, the mineral rights are exercisable within,

land which the community body is, at the same time, exercising its right to buy or already owns.

54 Declinature or extinction of right to buy

(1) If, at any time, a community body which has registered a community interest decides that it will not exercise its right to buy the land, it shall give Ministers written notice of its decision.

(2) On receipt of a notice under subsection (1) above, Ministers shall—

(a) send a copy of it to the Keeper and direct the Keeper to delete the community interest from the Register; and

(b) notify the owner of the land of that fact.

(3) Where, when that notice is given, that right to buy has arisen, the right is then extinguished.

(4) Nothing in or done under subsections (1) to (3) above prevents a community body from registering a community interest in the same land for a second or subsequent time.

(5) If, at any time after the owner of land has given notice under section 48(1) above but before the owner has concluded missives with a community body for the sale and purchase of the land in respect of which a right to buy has arisen, the owner of the land decides not to proceed further with the proposed transfer the owner shall give written notice of that fact to—

(a) Ministers; and

(b) each community body which has registered an interest in the land.

(6) Ministers shall send a copy of the notice given under subsection (5) above to the Keeper.

(7) Where a notice is given under subsection (5) above, the right to buy the land which arose under section 47 above is extinguished.

(8) Subsections (5) and (7) above do not apply where the right to buy land has arisen and is being exercised by virtue of the owner of land being deemed, by section 50(5) above, to have provided notice under section 48(1) above.

(9) Nothing in subsection (7) above prevents a right to buy land from arising for a second or subsequent time.

55 Right to buy same land exercisable by only one community body

(1) Only one community body may exercise the right to buy land in which two or more community bodies have registered community interests.

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(2) Where two or more community bodies have confirmed that they will exercise their rights to buy such land it is for Ministers to decide which one is to proceed.

(3) On Ministers so deciding—
- (a) the other community body's right to buy the land is extinguished; and
- (b) they shall—
  - (i) direct the Keeper to delete its interest from the Register; and
  - (ii) notify the owner of the land and the community bodies of that fact.

(4) Where a community body has confirmed that it will buy the land as respects which a crofting community body has applied to Ministers under section 73 below for consent to exercise the right to buy, it is for Ministers to decide which body is to proceed.

(5) Where Ministers decide that the crofting community body is to proceed—
- (a) the community body's right to buy the land is extinguished; and
- (b) they shall—
  - (i) direct the Keeper to delete its interest from the Register; and
  - (ii) notify the owner of the land, the crofting community body and the community body of that fact.

56 Procedure for buying

(1) It is for the community body to make the offer to buy in exercise of the right conferred by this Part of this Act.

(2) The offer shall be at a price—
- (a) agreed between the community body and the owner of the land; or
- (b) where no such agreement is reached, equal to—
  - (i) the value assessed by the appointed valuer; or
  - (ii) if that value is the subject of an appeal under section 62 below, the value determined by the appeal,

and shall specify the date of entry and of payment of the price in accordance with subsection (3) below.

(3) The date of entry and of payment of the price shall be—
- (a) a date not later than 6 months from the date when the community body sent the confirmation sought by Ministers under section 49(2)(a) above of its intention to buy;
- (b) where the price assessed by the appointed valuer is the subject of an appeal under section 62 below which has not, within the period of 4 months after the date when the community body sent that confirmation, been—
  - (i) determined; or
  - (ii) abandoned following agreement between the community body and the owner of the land,

  a date not later than 2 months after the appeal is so determined or, as the case may be, abandoned; or
- (c) such later date as may be agreed between the community body and the owner of the land.

(4) The offer may include such other reasonable conditions as are necessary or expedient to secure the efficient progress and completion of the transfer.

(5) If a community body has not, within the period fixed by or agreed under subsection (3) above, done any of the things mentioned in subsection (6) below, the community body's right to buy the land is extinguished and Ministers shall—

(a) direct the Keeper to delete its interest in the land from the Register; and

(b) notify the owner of the land of that fact.

(6) The things referred to in subsection (5) above are—

(a) concluding missives with the owner of the land for its sale to the community body;

(b) if the community body has not so concluded missives, taking all steps which, in the opinion of the Lands Tribunal, it could reasonably have taken in the time available towards so concluding missives short of applying to the Lands Tribunal for an order under section 57 below; and

(c) where—

(i) paragraph (b) above applies;

(ii) all such steps as are there mentioned have been taken; and

(iii) there has been, in the opinion of the Lands Tribunal, reasonably sufficient time also to apply to the Lands Tribunal for an order under section 57 below,

applying to the Lands Tribunal accordingly.

57 Powers of Lands Tribunal in event of failure or delay

(1) If, on application made to it by the owner of the land or the community body, the Lands Tribunal is satisfied that, following the making of an offer in pursuance of section 56 above, the owner of the land or the community body has unreasonably delayed the progress of transferring title to the land to the community body, the Tribunal may order the owner of the land or, as the case may be, the community body to take such remedial action as is specified in the order and to do so within such time as is so specified.

(2) If a community body—

(a) fails to comply with an order under subsection (1) above; and

(b) has not, within the time in which remedial action specified in such order is required to be taken, given notice under section 54 above to Ministers that it no longer wishes to exercise its right to buy the land,

the Lands Tribunal may make an order extinguishing its right to buy the land and, where the Tribunal makes such an order, it shall send a copy of the order to Ministers and the owner of the land.

(3) Ministers shall, if an order is made under subsection (2) above—

(a) direct the Keeper to delete the community body's interest from the Register; and

(b) notify the owner of the land of that fact.

(4) If an owner of land—

(a) fails to comply with an order under subsection (1) above; and

(b) has not, within the time in which remedial action specified in such order is required to be taken, given notice under section 54 above to Ministers and the community body that the owner of the land no longer wishes to proceed with the transfer of the land,

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the Lands Tribunal may make an order authorising the community body to acquire the land subject to such terms and conditions as may be specified in the order and requiring the owner of the land to transfer the land to the community body in accordance with such terms and conditions.

(5) If an owner of land refuses or fails to effect a transfer of land in pursuance of an order under subsection (4) above in accordance with such terms and conditions as may be specified in the order, the Lands Tribunal may authorise its principal clerk to adjust, execute and deliver such deeds or other documents as are necessary to complete the transfer to the like force and effect as if the owner had acted in the manner required by the order.

58 Procedure where right to buy activated by virtue of notice under section 50(3)

(1) Where a right to buy land arises, and may be exercised, by virtue of Ministers sending notice under section 50(3) above, subsections (2) to (6) below apply in place of sections 56 and 57 above in relation to the exercise of that right.

(2) It is for the community body to secure the expeditious exercise of such a right to buy and, in particular—
  (a) to prepare the documents necessary to effect the transfer; and
  (b) in so doing, to ensure that the land in respect of which the right to buy has arisen is the same as the land to be transferred.

(3) The community body shall pay a price—
  (a) equal to the value assessed by the appointed valuer; or
  (b) determined by an appeal.

(4) The owner of the land being bought is obliged—
  (a) to make available to the community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land; and
  (b) to transfer title accordingly.

(5) If the owner of the land refuses or fails to make those deeds and other documents available or they cannot be found, the Lands Tribunal may, on the application of the community body, order the owner or any other person appearing to the Tribunal to have those deeds and documents to produce them.

(6) If the owner of the land refuses or fails to effect such transfer as is mentioned in subsection (4) above, the Lands Tribunal may, on the application of the community body, authorise its principal clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the like force and effect as if done by the owner.

CHAPTER 5

VALUATION OF LAND

59 Assessment of value of land

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

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

(2) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1) above.

(3) In assessing the value of land in pursuance of an appointment under subsection (1) above, a valuer—

(a) does not act on behalf of the owner of the land or the community body which is exercising its right to buy the land; and

(b) shall act as an expert and not as an arbiter.

(4) The value to be assessed is the market value of the land—

(a) as at the date of notification under section 48(1) above which gave rise to the right to buy the land; or

(b) in a case where the community body's interest was registered in pursuance of an application to which section 39 above applied, as at the date of Ministers' receipt of that application.

(5) Where the land the value of which is to be assessed includes salmon fishings or mineral rights, the value of those fishings or rights shall be separately assessed.

(6) The "market value" of land, for the purposes of subsection (4) above, is the aggregate of—

(a) the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing; and

(b) where a community body is exercising a right to buy which has arisen in relation to part only of the land in respect of which the owner has given notice under section 48(1) above that a transfer is proposed, the amount of any diminution in the value of the other part of that land which is attributable to the fact that part only of the land is being bought by the body.

(7) In assessing, for those purposes, the value which land would have in the circumstances mentioned in subsection (6)(a) above—

(a) account may be taken, insofar as a seller and a buyer of the land such as are mentioned in subsection (6) above would do so, of any factor attributable to the known existence of a person who (not being the community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than other persons because of a characteristic of the land which relates peculiarly to that person's interest in buying it;

(b) no account shall be taken of—

(i) the registration of an interest in or the exercise of a right to buy the land by a community body under this Part of this Act;

(ii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale;

(iii) any depreciation in the value of any other land owned by the seller;

(iv) the expenses of the valuation or otherwise related to the sale and purchase of the land.

(8) Where the proposed transfer which gave rise to a community body's right to buy land was conditional upon moveable property belonging to the owner of the land and used

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

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

(10) The expense of a valuation under this section shall be met by Ministers.

60 Procedure for valuation

(1) In carrying out a valuation under section 59 above, the valuer shall invite the owner of the land and the community body which is exercising its right to buy the land to make written representations about the value of the land and any moveable property being bought with the land and shall consider any representations made accordingly.

(2) The valuer shall, within the period set out in subsection (3) below, notify Ministers, the owner of the land and the community body which is exercising its right to buy the land of the assessed value of the land and of any moveable property which has been valued.

(3) The period referred to in subsection (2) above is the period of 6 weeks beginning with the date of appointment of the valuer or such other longer period as Ministers may, on an application by the valuer, fix.

(4) The validity of anything done under this Part of this Act is not affected by any failure by a valuer to comply with the time limit specified in subsection (3) above.

CHAPTER 6

APPEALS

61 Appeals

(1) An owner of land may, by summary application, appeal to the sheriff against—
  (a) a decision by Ministers that a community interest in the land is to be entered in the Register; or
  (b) a decision by Ministers to give consent to the exercise by a community body of its right to buy the land.

(2) A community body may, by summary application, appeal to the sheriff against—
  (a) a decision by Ministers that its community interest is not to be entered in the Register; or
  (b) a decision by Ministers not to give consent to the exercise by the community body of its right to buy.

(3) A person who is a member of a community as defined for the purposes of section 34(1)(a) above in relation to a community body or who has any interest in the land giving rise to a right which is legally enforceable by that person may, by summary application, appeal to the sheriff against—
  (a) a decision by Ministers that a community interest in land is to be entered in the Register on the application of the community body; or

(b) a decision by Ministers to consent to the exercise of the community body's right to buy land.

(4) An appeal under subsection (1), (2) or (3) above shall be lodged within 28 days of the date on which Ministers decided whether to enter the community interest or, as the case may be, whether to consent to the exercise of the right to buy land.

(5) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.

(6) Where an appeal is made—
- (a) under subsection (1) above the owner shall intimate that fact to—
  - (i) the community body; and
  - (ii) Ministers;
- (b) under subsection (2) above the community body shall intimate that fact to—
  - (i) the owner; and
  - (ii) Ministers; or
- (c) under subsection (3) above the member of the community shall intimate that fact to—
  - (i) the community body;
  - (ii) the owner; and
  - (iii) Ministers.

(7) The decision of the sheriff in an appeal under this section—
- (a) may require rectification of the Register;
- (b) may impose conditions upon the appellant;
- (c) is final.

62 Appeals to Lands Tribunal: valuation

(1) The owner of the land and the community body which is exercising its right to buy the land may appeal to the Lands Tribunal against the valuation carried out under section 59 above.

(2) An appeal under this section shall state the grounds on which it is being made and shall be lodged within 21 days of the date of notification under section 60 above.

(3) In an appeal under this section, the Lands Tribunal may reassess the value of—
- (a) the land;
- (b) any moveable property used in connection with, and being sold with, the land; or
- (c) both the land and any such moveable property.

(4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.

(5) The hearing of an appeal under this section shall begin not later than the first sitting day after the expiry of the period of four months beginning with the day on which the appeal was lodged.

(6) In subsection (5) above, a "sitting day" is a day when the Lands Tribunal normally sits.

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(7) The Lands Tribunal shall give reasons for its decision on an appeal under this section and issue a written statement of those reasons within 4 weeks of the hearing of the appeal.

(8) The validity of anything done under this Part of this Act is not affected by any failure of the Lands Tribunal to comply with the time limit specified in subsection (7) above.

(9) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.

(10) Ministers' powers under the Lands Tribunal Act 1949 (c. 42) to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

63 Compensation

(1) Any person (other than a community body) who has incurred loss or expense—
   (a) in complying with the procedural requirements of this Part of this Act;
   (b) as a result of failure by a community body to comply with an order of the Lands Tribunal under section 57 above;
   (c) attributable to a prohibition imposed under subsection (5)(e) of section 37 above; or
   (d) as a result of the operation of paragraph (a) or (b) of section 56(3) above,

   is entitled to compensation from Ministers of such amount as they may determine.

(2) The reference in subsection (1)(d) above to loss or expense incurred as a result of the operation of paragraph (a) or (b) of section 56(3) above is a reference to loss or expense incurred which would be likely not to have been incurred in a sale of the land to a person who, not being a community body, would not have had the benefit of the provision of those paragraphs.

(3) Where the community body and the owner of the land agree, under paragraph (c) of section 56(3) above, that the date of entry and payment of price shall be on a date after the last date on which that date could, by the operation of paragraphs (a) or (b) of that section, otherwise have been, no compensation shall be payable for any loss or expense attributable to any period occurring after that last date.

(4) A person who has incurred loss or expense as a result of the suspension under this Act of a right of pre emption, redemption or reversion enjoyed by that person is entitled to compensation.

(5) The procedure for recovering losses and expenses under this section shall be as prescribed.

64 Compensation appeals

(1) An appeal may be made to the Lands Tribunal against the decision of Ministers on compensation under section 63 above.

(2) The Lands Tribunal may, on such an appeal, substitute its decision for that of Ministers.

(3) Such an appeal shall be lodged within 21 days of the decision appealed against.

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CHAPTER 7

GENERAL AND MISCELLANEOUS PROVISIONS

65 Effect of right to buy on other rights

(1) Any rights of pre-emption, redemption or reversion otherwise exercisable over land in which a community interest has been registered are—

(a) suspended as from the date when the community body sends the confirmation sought by Ministers under section 49(2)(a) above of its intention to buy the land; and

(b) revived—

(i) when the transfer under this Part of this Act of the land to the community body is completed; or

(ii) if such a transfer is not completed because the community body does not (by virtue of declining, under section 54 above, to buy the land or for any other reason) proceed to buy the land.

(2) Any rights which a person has in land over which a community interest has been registered, being rights conferred on the person under—

(a) Part 3 of this Act;

(b) section 12 of the Crofters (Scotland) Act 1993 (c. 44);

(c) any order under that Act of the Land Court in favour of the crofter;

(d) the provisions of Part III of the Housing (Scotland) Act 1987 (c. 26) relating to a person's right to purchase the house of which the person is a tenant,

are suspended as provided in paragraph (a) of subsection (1) above but revived in the circumstances set out in paragraph (b) of that subsection.

(3) Nothing in this Part of this Act—

(a) affects the operation of an inhibition on the sale of the land;

(b) prevents an action of adjudication from proceeding; or

(c) affects the commencement, execution or operation of any other diligence.

66 Amendment of Land Registration (Scotland) Act 1979

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

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

(5) Subsection (4) above does not apply where the application has been rejected by reason only of the application not being accompanied by a declaration required under section 43(2) of that Act of 2003.".

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67 Construction of references to land in which community interest registered

(1) Any reference in this Part of this Act (other than a reference in subsection (2) below) to land in which a community interest has been registered includes a reference to part of such land.

(2) Subsection (1) above shall not operate so as to enable a right to buy land to be exercised by a community body in relation to part only of the land in respect of which the right has arisen.

(3) Any reference in this Part of this Act to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—
- (a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35); or
- (b) a warrant granted under section 24(1) of that Act.

PART 3

THE CROFTING COMMUNITY RIGHT TO BUY

CHAPTER 1

GENERAL EXTENT OF CROFTING COMMUNITY RIGHT TO BUY

68 Land which may be bought: eligible croft land

(1) The land which may be bought under this Part of this Act is eligible croft land.

(2) In this Part of this Act, "eligible croft land" means—
- (a) land within the meaning of "croft" given by section 3 (meaning of "croft" and "crofter") of the Crofters (Scotland) Act 1993 (c. 44) ("the 1993 Act") together with any land or right which is deemed by subsections (4) or (5) of that section to be a croft or part thereof (including arable machair and scattalds);
- (b) any land in which a tenant of a croft, whether alone or in common with others, has a right of pasture or grazing;
- (c) any land—
  - (i) comprising any part of a common grazing held by a tenant of a croft; or
  - (ii) held runrig by a tenant of a croft,

  which has not been apportioned for the exclusive use of a tenant of a croft under section 52 of the 1993 Act; and
- (d) any land which consists of salmon fishings in inland waters within or contiguous to, or mineral rights (other than rights to oil, coal, gas, gold or silver) in, land referred to in paragraphs (a) to (c) above (including any such fishings or rights which are owned separately from that land).

(3) Eligible croft land does not, however, include any croft occupied or worked by its owner or a member of its owner's family.

(4) In subsection (3) above, the reference to a croft being occupied includes—
- (a) a reference to its being occupied otherwise than permanently; and

(b) a reference to its being occupied by way of the occupation by its owner of any dwellinghouse on or pertaining to it.

(5) In this Part of this Act, "inland waters" has the same meaning as in the Salmon and Freshwater Fisheries (Protection) (Scotland) Act 1951 (c. 26).

69 Land which may be bought: salmon fishings and mineral rights

(1) A crofting community body may apply, under section 73 below, to buy eligible croft land which consists of salmon fishings or mineral rights only—

(a) where—

(i) it is simultaneously applying; or

(ii) it has made an application in respect of which Ministers have not made a decision,

to buy the croft land to which such fishings or rights relate; or

(b) during the relevant period.

(2) Such an application may be made during the relevant period only where the crofting community body—

(a) has provided confirmation under section 85(1) below of its intention to proceed to buy the croft land to which the fishings or rights relate; or

(b) has bought and retained that related croft land in accordance with the provisions of this Part of this Act.

(3) In subsection (1) above, "relevant period" means the period beginning with the date on which Ministers consented to the application under section 73 below to buy the croft land to which the fishings or rights relate and ending—

(a) where the crofting community body does not proceed to exercise its right to buy that related croft land, on the date on which it withdraws, under section 85(2) below, its confirmation to so proceed; or

(b) where the crofting community body has bought and retained that related croft land—

(i) in relation to salmon fishings, one year; or

(ii) in relation to mineral rights, five years,

after the date on which the crofting community body bought that land.

VALID FROM 25/06/2007

[F7 69A Land which may be bought: interest of tenant over land

(1) This section applies where a tenancy which is neither—

(a) a croft tenancy; nor

(b) the tenancy of a dwelling-house,

has been created over land at least part of which is eligible croft land (the land over which the tenancy has been created being in this section referred to as the "tenanted land").

(2) Where this section applies, a crofting community body may apply, under section 73 below, to buy the interest mentioned in subsection (3) below—

(a) where—

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(i) it is simultaneously applying; or

(ii) it has made an application in respect of which Ministers have not made a decision,

to buy eligible croft land any part of which is part of the tenanted land (any such eligible croft land being in this section referred to as the "principal subjects"); or

(b) if the conditions set out in subsection (4) below are met, during the relevant period.

(3) The interest is the interest of the tenant over so much of the tenanted land as is comprised within the principal subjects.

(4) The conditions are that the crofting community body—

(a) has provided confirmation under section 85(1) below of its intention to proceed to buy the principal subjects; or

(b) has bought and retained those subjects in accordance with the provisions of this Part of this Act.

(5) In subsection (2) above, "relevant period" means the period beginning with the date on which Ministers consented to the application under section 73 to buy the principal subjects and ending—

(a) where the crofting community body does not proceed to exercise its right to buy those subjects, on the date on which it withdraws, under section 85(2) below, its confirmation so to proceed; or

(b) where the crofting community body has bought and retained those subjects, five years after the date on which the crofting community body bought those subjects.**]**

Textual Amendments

F7 S. 69A inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 31(2)**, 39, 43; S.S.I. 2007/269, **art. 2**, Sch.

70 Land which may be bought in addition to eligible croft land

(1) Where eligible croft land is being bought under this Part of this Act eligible additional land may also be so bought.

(2) Where eligible croft land is being, or has been, bought under this Part of this Act eligible sporting interests may, subject to subsection (3) below, also be so bought.

(3) Where the crofting community body have bought, and retained ownership of, eligible croft land in accordance with the provisions of this Part of this Act it may, within the period beginning with the date on which Ministers consented to the application under section 73 below to buy the eligible croft land and ending 5 years after the date on which the crofting community body bought that land, apply under that section to buy eligible sporting interests which have not previously been leased by the crofting community body under section 83 below.

(4) In this Part of this Act—

"eligible additional land" means, in relation to a crofting community body, land—

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(a) any part of which is contiguous to the eligible croft land which is being bought by the body; and
(b) owned by the owner of such eligible croft land,

other than land which consists of salmon fishings in inland waters within or contiguous to, or mineral rights in, such land; and

"eligible sporting interests" means the rights of a person other than the owner of eligible croft land under any lease or other contract to shoot or fish on the land.

(5) The definition of "eligible sporting interests" in subsection (4) above does not include any right under a lease of salmon fishings in inland waters within or contiguous to eligible croft land.

71 Crofting community bodies

(1) A crofting community body is, subject to subsection (4) below, a company limited by guarantee, the memorandum and articles of association of which include the following—
(a) a definition of the crofting community to which the company relates;
(b) provision enabling the company to exercise the right to buy land and sporting interests under this Part of this Act;
(c) provision that the company must have not fewer than 20 members;
(d) provision whereby the majority of the members of the company is to consist of members of the crofting community;
(e) provision whereby the members of the company who consist of members of the crofting community have control of the company;
(f) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts;
(g) provision that any surplus funds or assets of the company are to be applied for the benefit of the crofting community; and
(h) provision that on the winding up of the company and after satisfaction of its liabilities, its property (including any land and sporting interests acquired by it under this Part of this Act) passes—
(i) to such other crofting community body or community body as may be approved by Ministers; or
(ii) if no other such body is so approved, to Ministers or to such charity as Ministers may direct.

(2) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (1)(c) above in relation to any body they may specify.

(3) In subsection (1) above, "company limited by guarantee" has the same meaning as in section 1(2)(b) of the Companies Act 1985 (c. 6).

(4) A body is not a crofting community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(5) A crofting community shall be defined for the purposes of subsection (1)(a) above—
(a) as those persons who—

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(i) are resident in the crofting township which is situated in or otherwise associated with the croft land which the crofting community body has a right to buy under this Part of this Act; or

(ii) being tenants of crofts in that crofting township, are resident in any other place within sixteen kilometres of that township,

and who are entitled to vote in local government elections in the polling district or districts in which that township or, as the case may be, that other place is situated; or

(b) if, in Ministers' opinion, it is inappropriate so to define the crofting community, in such other way as Ministers approve for the purposes of this paragraph.

(6) In subsection (5)(a)(i) above, "crofting township" means—

(a) any two or more crofts which share the right to use a common grazing together with that common grazing and any houses pertaining to or contiguous to those crofts or that common grazing; or

(b) any combination of two or more crofting townships within that meaning.

(7) The memorandum and articles of a company which is a crofting community body may, notwithstanding the generality of paragraph (h) of subsection (1) above, provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.

(8) In this section, "charity" means a body **[**[F8]entered in the Scottish Charity Register**]**.

Textual Amendments

F8 Words in s. 71(8) substituted (1.4.2006) by Charities and Trustee Investment (Scotland) Act 2005 (asp 10), ss. 104, 107(2), **Sch. 4 para. 13(b)**; S.S.I. 2006/189, **art. 2**, Sch.

72 Provisions supplementary to section 71

(1) A crofting community body which has bought land under this Part of this Act shall not, for as long as the land remains in its ownership, modify its memorandum or articles of association without Ministers' consent in writing.

(2) If Ministers are satisfied that a body which has so bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.

CHAPTER 2

EXERCISE OF RIGHT TO BUY

73 Application by crofting community body for consent to buy croft land etc.

(1) The right to buy under this Part of this Act may be exercised only by a crofting community body.

(2) That right may be so exercised only with the consent of Ministers given on the written application of the crofting community body.

(3) That right may be exercised in relation to more than one holding of land or sporting interests but in order so to exercise the right an application must be made in respect of each such holding and applications so made may be differently disposed of.

(4) In subsection (3) above, a "holding" of land or of a sporting interest is land in the ownership of one person or in common or joint ownership or a sporting interest to which one person is entitled or to which there is a common or joint entitlement.

(5) Such an application shall be made in the prescribed form and shall include or be accompanied by information of the prescribed kind including information (provided, where appropriate, by or by reference to maps or drawings) about—

(a) the location and boundaries of the land or sporting interests in respect of which the right to buy is sought to be exercised (the "subjects of the application");

(b) all—

(i) rights and interests in the subjects of the application;

(ii) sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land,

known to the applicant body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining;

(c) whether the crofting community body proposes to exclude from the eligible croft land which it proposes to buy—

(i) salmon fishings in inland waters within or contiguous to; or

(ii) mineral rights in,

the land;

(d) whether the crofting community body proposes a leaseback of sporting interests under section 83 below;

(e) the proposed use, development and management of the subjects of the application;

(f) whether and how the matters referred to in paragraph (e) above would affect any of the facilities referred to in paragraph (b)(ii) above insofar as those facilities connect with similar facilities on other land or also serve other land; and

(g) the extent to which the matters referred to in paragraph (e) above would consist of or support the sustainable use or development of the subjects of the application, including any land or sporting interests previously acquired by the crofting community body.

(6) A crofting community body applying under this section shall, at the same time as it applies—

(a) send a copy of its application to the owner of the subjects of the application; and

(b) where there is a standard security over an interest in any subjects to which the application relates, send a copy of its application and the accompanying information to the creditor who holds the standard security and invite the creditor—

(i) to notify the crofting community body and Ministers, within 60 days of receipt of the invitation, if any of the circumstances set out in subsection (7) below has arisen (or arises within 60 days of receipt of the invitation); and

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(ii) if such notice is given, to provide Ministers, within that time, with the creditor's views in writing on the application.

(7) Those circumstances are that—

(a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c. 35) in relation to the subjects in which the crofting community body is seeking to exercise its right to buy or any part of those subjects and that notice has not been complied with;

(b) a notice of default served by the creditor under section 21 of that Act in relation to those subjects or any part of those subjects has not been complied with and the person on whom the notice was served has not, within the period specified in section 22 of that Act, objected to the notice by way of application to the court;

(c) where that person has so objected, the court has upheld or varied the notice of default; and

(d) the court has granted the creditor a warrant under section 24 of that Act in relation to those subjects or any part of those subjects.

(8) On receipt of an application, Ministers shall—

(a) invite—

(i) the owner of or, as the case may be, person entitled to the subjects of the application;

(ii) the owners of all land contiguous to land which consists of the subjects of the application;

(iii) the Crofters Commission; and

(iv) any other person whom Ministers consider to have an interest in the application,

to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application; and

(b) send a copy of the invitation to the crofting community body.

(9) If the subjects of the application include land other than eligible croft land, the invitation given under subsection (8)(a)(i) above shall seek the consent of the owner of that eligible additional land to its sale under this Part of this Act.

(10) Ministers shall, as soon as may be after receiving an application, give public notice of it and of the date by which, under subsection (8)(a) above, views are to be received by them and, in that notice, invite persons to send to Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.

(11) That public notice shall be given by advertisement—

(a) in such newspaper circulating in the area where the subjects of the application are situated as Ministers think appropriate; and

(b) in the Edinburgh Gazette.

(12) Ministers shall—

(a) send copies of any views they receive under this section to the crofting community body; and

(b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.

(13) Ministers shall, when considering whether to consent to an application under this section, have regard to all views on it and responses thereto which they have received in answer to invitations under this section.

(14) Ministers shall decline to consider an application which—

(a) does not comply with the requirements of or imposed under this section;

(b) is otherwise incomplete;

(c) discloses that the subjects of the application, or any part of them, are not within the respective definitions in sections 68 and 70 above; or

(d) otherwise indicates that it is one which Ministers would be bound to reject;

and Ministers shall not be required to comply with subsections (8) to (13) above in relation to such an application.

(15) Ministers shall not reach a decision on an application before—

(a) the date which is 60 days after the last date on which the crofting community body may provide Ministers with a response to the invitation given under subsection (12) above; or

(b) if by that date the Land Court has not advised Ministers of its finding on any question referred to it under section 79(2) or 81(1) below in relation to the application, the date on which the Land Court provide Ministers with that finding.

74 Criteria for consent by Ministers

(1) Ministers shall not consent to an application under section 73 above unless they are satisfied—

(a) that the croft land to which the application relates is eligible croft land;

(b) that any additional land to which the application relates is eligible additional land;

(c) that any eligible additional land is to be bought only at the request or with the consent of its owner;

(d) that any salmon fishings to which the application relates are eligible croft land;

(e) that any mineral rights to which the application relates are eligible croft land;

(f) that any sporting interests to which the application relates are eligible sporting interests;

(g) that the subjects of the application have not previously been bought under this Part of this Act and disposed of by the crofting community body;

(h) that the owner is not—

(i) prevented from selling the subjects of the application; or

(ii) subject to any enforceable personal obligation (other than an obligation arising from any right mentioned in section 84(1) below), or order of the Land Court, to sell them otherwise than to the crofting community body;

(i) that the crofting community body complies with the provisions of section 71 above;

(j) that the exercise by the crofting community body of the right to buy under this Part of this Act is compatible with furthering the achievement of sustainable development;

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(k) that, where the subjects of the application are salmon fishings, mineral rights or sporting interests, the crofting community body has or is acquiring sufficient croft land to enable those subjects to be exploited so as to support the development of the crofting community defined in relation to that body in pursuance of section 71 above;

(l) that the crofting community so defined are, in relation to the subjects of the application, an appropriate crofting community;

(m) that the crofting community so defined have approved the proposal to exercise the right to buy; and

(n) that it is in the public interest that the right to buy be exercised.

(2) For the purposes of subsection (1)(n) above, the public interest includes the interest of any sector (however small) of the public which, in the opinion of Ministers, would be affected by the exercise of the right to buy, and such a sector includes a community as defined for the purposes of section 34(1)(a) above and a crofting community as defined for the purposes of section 71(1)(a) above.

75 Ballot to indicate approval for purposes of section 74(1)(m)

(1) The crofting community, defined in pursuance of section 71 above in relation to the crofting community body which has applied to buy land or sporting interests, are to be taken for the purposes of section 74(1)(m) above as having approved a proposal to buy if—

(a) a ballot of the members of the crofting community so defined has, during the period of six months which immediately preceded the date on which the application was made, been conducted by the crofting community body on the question whether the crofting community body should buy the land or sporting interests; and

(b) the majority of—

(i) those voting; and

(ii) the members of the crofting community so defined who voted and who are tenants of crofts within the land which the crofting community body has applied to buy or, as the case may be, within land over which the sporting interests which the crofting community body has applied to buy may be exercised,

have voted in favour of the proposition that the crofting community body exercises its right to buy.

(2) The ballot shall be conducted as prescribed; and the provisions prescribed shall include provision for the ascertainment and publication of the number of persons eligible to vote in the ballot, the number who did vote and the numbers of valid votes respectively cast for and against the proposition.

(3) If the ballot is not so conducted, the crofting community body's right to buy the land or sporting interests which are the subject of the body's application is, so far as proceeding on that application, extinguished.

(4) The crofting community body which conducts a ballot shall, within 21 days of the ballot (or, if its application under section 73 above is given before the expiry of that period, together with the application) and in the prescribed form of return, notify—

(a) the result;

(b) the number of persons eligible to vote;

(c) the number of those persons who are tenants of crofts within the land which the body proposes to buy;

(d) the number of persons who voted and the number of those persons who are such tenants; and

(e) the number of persons who voted in favour of the proposal to buy and the number of those persons who are such tenants,

to Ministers.

(5) Any person who, whether alone or in common with others—

(a) has a right of pasture or grazing, or holds a common grazing, within the land which the crofting community body has applied to buy or, as the case may be, within land over which the sporting interests which the crofting community body has applied to buy may be exercised; or

(b) holds any part of that land runrig,

is, for the purposes of this section, to be regarded as a tenant of a croft within the land which the body proposes to buy.

76 Right to buy same croft land exercisable by only one crofting community body

(1) Only one crofting community body may exercise the right under this Part of this Act to buy the same land or sporting interests.

(2) Where two or more such bodies have applied to buy the same land or sporting interests, it is for Ministers to decide which is to proceed.

(3) Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses thereto, which they have received in answer to invitations under section 73 above.

(4) On Ministers so deciding—

(a) the other body's right to buy the land or sporting interests which are the subject of the body's application is, so far as proceeding on that application, extinguished; and

(b) they shall notify—

(i) the owner of the land or person entitled to the sporting interests; and

(ii) the bodies,

of that fact.

77 Reference to Land Court of purchase of eligible additional land without owner's consent

(1) Where the owner of any eligible additional land to which an application under section 73 above relates has not requested, or consented to, the sale of that land Ministers shall refer to the Land Court the question of whether the eligible additional land may be bought by the crofting community body without the consent of its owner.

(2) In considering any question referred to it under subsection (1) above, the Land Court may have regard to any representations made to it by—

(a) the applicant crofting community body;

(b) the owner of the land which is the subject of the application; or

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(c) any other person who, in the opinion of the Land Court, appears to have an interest.

(3) On a reference under subsection (1) above the Land Court may determine that eligible additional land may be purchased by the crofting community body without the consent of its owner (and such determination shall have the same effect as if Ministers had been satisfied as to the matter referred to in section 74(1)(c) above) but only if the court is satisfied—

(a) that the purchase of the eligible additional land by the crofting community body is essential to the development of the crofting community;

(b) that such development is compatible with furthering the achievement of sustainable development;

(c) that the purpose to which that land would be put cannot reasonably be achieved by means within the powers of the Court other than by its purchase under this Part of this Act by the crofting community body;

(d) that where that land forms part of an area of land all of which is in the same ownership, the purchase of the land will not seriously jeopardise the continued use and management of the remaining land; and

(e) that that land does not exceed, in area, whichever is the greater of—

(i) 10 hectares; or

(ii) 5 per cent of the combined area of the land and any croft land being bought or which had previously been bought under this Part of this Act by the crofting community body.

(4) Where the Land Court determine, under subsection (3) above, that eligible additional land may be purchased by the crofting community body without the consent of its owner it may provide that Ministers shall, under section 80 below, make their consent to the application subject to the imposition, on transfer of the land, of such conditions upon the title to the land as the Court may specify.

(5) If the Land Court considers that the purpose to which eligible additional land or any part of it is proposed to be put can be substantially achieved by imposing conditions upon the title to that land, it may make an order—

(a) approving the purchase of the land sought to be bought but not the eligible additional land or that part of it; and

(b) providing that Ministers shall, under section 80 below, make their consent to the application subject to the imposition of such title conditions as the Court considers appropriate on the eligible additional land or, as the case may be, that part of it.

(6) An order under subsection (5) above has the same effect as Ministers being satisfied as to the matter set out in section 74(1)(c) above.

(7) The references in subsections (4) and (5) above to conditions upon the title to the land include references to real burdens and servitudes.

78 Modification of section 77(3)(a) to (e)

(1) Ministers may, by order, modify the provisions of paragraphs (a) to (e) of subsection (3) of section 77 above.

(2) Modifications under subsection (1) above may include the addition of new paragraphs.

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79 Additional land included at request of owner

(1) Where the owner of eligible croft land or eligible additional land has, within the time limit for submitting views in pursuance of section 73 above, requested that eligible additional land or, as the case may be, further eligible additional land be included with the land to be bought under this Part of this Act, Ministers may, if they consider that it is in the public interest to do so, make it a condition of their proceeding to consider the application by the crofting community body that the body modifies its application so as to include in the land to be bought that eligible additional land as further such land.

(2) Ministers—
(a) may; and
(b) on being so required by the owner of land who has made such a request or the crofting community body in relation to whose application the condition referred to in subsection (1) above has been imposed, shall,

refer to the Land Court for its findings in fact in respect of any matter relating to the question of whether the additional land or further additional land should be included with the land to be bought.

(3) In considering any question referred to it under subsection (2) above, the Land Court may have regard to any representations made to it by—
(a) the applicant crofting community body;
(b) the owner of the land which is the subject of the application; or
(c) any other person who, in the opinion of the Land Court, appears to have an interest.

(4) On a reference under subsection (2) above, the Land Court shall report its findings in fact to Ministers.

(5) Where a referral is made to the Land Court under subsection (2) above, Ministers shall not consent to the application to which the referral relates before they have—
(a) received the Land Court's report of its findings in fact; and
(b) taken those findings into account when considering or further considering the application.

80 Consent conditions

Ministers may make their consent to an application under section 73 above subject to conditions.

81 Reference to Land Court of questions on applications

(1) At any time before Ministers reach a decision on an application which has been made under section 73 above—
(a) Ministers;
(b) any person who is a member of the crofting community defined in relation to the applicant crofting community body in pursuance of section 71 above;
(c) any person who has any interest in the land or sporting interests which are the subject of the application giving rise to a right which is legally enforceable by that person; or
(d) any person who is invited, under section 73(8)(a) above, to send views to Ministers on the application,

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may refer to the Land Court any question (other than a question which Ministers may, or may be required to, refer under section 77(1) or 79(2) above) relating to the application.

(2) In considering any question referred to it under subsection (1) above, the Land Court may have regard to any representations made to it by—
   (a) the applicant crofting community body;
   (b) the owner of the land which is, or person entitled to the sporting interests which are, the subject of the application; or
   (c) any other person who, in the opinion of the Land Court, appears to have an interest.

(3) The Land Court—
   (a) shall advise Ministers of its finding on any question so referred; and
   (b) may, by order, provide that Ministers may consent to the application only if they impose, under section 80 above, such conditions as the Court may specify.

(4) If the Land Court considers any question referred to it under this section to be irrelevant to Ministers' decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.

82 Notification of Ministers' decision on application

(1) Ministers shall give written notice, in prescribed form, of their decision upon an application, and their reasons for it, to—
   (a) the applicant crofting community body;
   (b) the owner of the land or person entitled to the sporting interests to which the application relates;
   (c) every other person who was invited, under section 73(8)(a) above, to send them views on the application; and
   (d) where their decision is to consent to the application, to the Keeper of the Registers of Scotland.

(2) The form of notice shall be prescribed so as to secure that the notice includes a full description of—
   (a) the land or sporting interests to which the consent relates (provided, where appropriate, by or by reference to maps and drawings); and
   (b) where their decision is to consent to the application, any conditions imposed under section 80 above by virtue of subsections (4) or (5) of section 77 above.

(3) The notice given under subsection (1) above shall—
   (a) contain information about the consequences of the decision notified and of the rights of appeal against it given by this Part of this Act; and
   (b) state the date as at which the decision is effective.

83 Leaseback to owner of sporting interests

(1) This section applies where—
   (a) at the date of an application under section 73 above, only the owner of the land to be bought is entitled to the sporting interests on the land;

(b) the crofting community body has indicated that it proposes a leaseback of those interests under section 73(5)(d) above;

(c) the owner, within the period of 60 days referred to in subsection (8) of that section, notifies Ministers in writing that the owner wishes a lease of those interests;

(d) Ministers have consented to the application; and

(e) the crofting community body and the owner of the land have not, prior to consent being given, provided Ministers with a copy of an agreement between them on the terms and conditions of the lease of those interests.

(2) Where this section applies Ministers shall, within 7 days of consenting to the application, refer to the Land Court the question of what terms and conditions are appropriate for a lease of those sporting interests from the crofting community body to the owner.

(3) The Land Court shall, subject to subsection (4) below, determine those terms and conditions.

(4) Those terms and conditions shall include provision that—

(a) the annual rent shall be nominal;

(b) the duration of the lease shall be not less than 20 years; and

(c) the owner shall be entitled to assign the tenant's interest under the lease,

and the terms and conditions shall not prevent the lease from being recorded or registered under the Registration of Leases (Scotland) Act 1857 (c. 26).

(5) The crofting community body shall, forthwith on completion of the transfer of the land, grant a lease accordingly to the owner of the land.

(6) If a crofting community body refuses or fails to grant a lease in accordance with such terms and conditions as have been determined, the Land Court may authorise its principal clerk to adjust, execute and deliver the lease to the like force and effect as if done by the crofting community body.

84 Effect on other rights of Ministers' decision on right to buy

(1) Any rights of pre-emption, redemption or reversion or deriving from any option to purchase otherwise exercisable over land or sporting interests which are the subject of an application by a crofting community body under this Part of this Act are—

(a) suspended as from the date when Ministers approve the body's application under section 73 above to buy the land or sporting interests; and

(b) revived—

(i) when the transfer under this Part of this Act of the land or sporting interests to the body is completed; or

(ii) if such a transfer is not completed because the body does not (by virtue of withdrawing, under section 85 below, its application under section 73 above or its confirmation of its intention to proceed to buy or for any other reason) proceed to buy the land or sporting interests.

(2) Any rights which a person has in land which a crofting community body is seeking to buy under this Part of this Act, being rights conferred on the person under—

(a) Part 2 of this Act;

(b) section 12 of the 1993 Act;

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(c) the provisions of Part III of the Housing (Scotland) Act 1987 (c. 26) relating to a person's right to purchase the house of which the person is a tenant,

are suspended as provided in paragraph (a) of subsection (1) above but revived in the circumstances set out in paragraph (b) of that subsection.

(3) Nothing in this Part of this Act—

(a) affects the operation of an inhibition on the sale of the land;

(b) prevents an action of adjudication from proceeding; or

(c) affects the commencement, execution or operation of any other diligence.

85 Confirmation of intention to proceed with purchase and withdrawal

(1) A crofting community body's right to buy land or sporting interests under this Act is exercisable only if, within 21 days of the date of notification under section 88(12) below, it sends notice confirming its intention to proceed to buy the land or interests to Ministers and to the owner of the land or person entitled to the interests.

(2) A crofting community body may, at any time after—

(a) making an application under section 73 above, withdraw the application; or

(b) confirming its intention to proceed under subsection (1) above, withdraw that confirmation,

by notice in writing to that effect sent to Ministers.

(3) Ministers shall, within 7 days of receipt of notice under subsection (1) or (2) above, acknowledge receipt and send a copy of that acknowledgement to the owner of the land or person entitled to the interests.

86 Completion of purchase

(1) It is for the crofting community body to secure the expeditious exercise of its right to buy and, in particular—

(a) to prepare the documents necessary to—

(i) effect the transfer; and

(ii) impose any conditions (including any real burdens or servitudes) which Ministers, under section 80 above, require to be imposed upon the title to land; and

(b) in so doing, to ensure—

(i) that the subjects of the application to which Ministers have consented are the same as those to be transferred; and

(ii) that the transfer is to be effected in accordance with any other conditions imposed by Ministers under section 80 above.

(2) Where the crofting community body is unable to fulfil the duty imposed by subsection (1)(b) above because part of the land or sporting interests in respect of which Ministers' consent was given is not owned by the person named as its owner or exercisable by the person named as the person entitled to them in the application under section 73 above, it shall refer that matter to Ministers.

(3) On a reference under subsection (2) above, Ministers may direct—

(a) that the right to buy be exercised as if the part of the land or interests not owned or not exercisable by the owner or person entitled so named had never

been included in the description of the land or interests in the application to which they had consented; or

(b) that the crofting community body's right to buy the land or interests which are the subject of the body's application is, so far as proceeding on that application, extinguished.

(4) The owner of the land or person entitled to the interests being bought is obliged—

(a) to make available to the crofting community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land or interests; and

(b) to transfer title accordingly.

(5) If, within 6 weeks of the date on which Ministers consent to an application to buy land or sporting interests, the owner of the land or person entitled to the interests refuses or fails to make those deeds and other documents available, or they cannot be found, the Land Court may, on the application of the crofting community body, order the owner or person entitled or any other person appearing to the Court to have those deeds and documents to produce them.

(6) If the owner of the land or person entitled to the interests refuses or fails to effect such sufficient transfer as is mentioned in subsection (4) above, the Land Court may, on the application of the crofting community body, authorise its principal clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the like force and effect as if done by the owner or person entitled.

87 Completion of transfer

(1) The consideration for the transfer of the land or sporting interests shall be its or their value as assessed under section 88 below.

(2) That consideration shall, subject to subsections (3) and (4) below, be paid not later than the "final settlement date", being the date on which expires a 6 month period beginning with the date (the "consent date") when Ministers consented to the application under section 73 above to buy the land or interests.

(3) Where—

(a) the owner or person entitled to the interests and the crofting community body so agree, the consideration may be paid on a date later than the final settlement date;

(b) the assessment of the valuation of the land or interests under section 88 below has not been completed by a date 4 months after the consent date, the consideration shall be paid not later than 2 months after the date when that assessment is completed;

(c) that valuation is the subject of an appeal which has not been determined within 4 months of the consent date, the consideration shall be paid not later than 2 months after the date of that determination.

(4) Where, on the date the consideration is to be paid, the owner or person entitled to the interests is not able to effect the grant of a good and marketable title to the crofting community body—

(a) the consideration; or

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(b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 88(1) below as a fair estimate of what the consideration might be,

shall be consigned into the Land Court until that title is granted or the crofting community body gives notice to the Court of its decision not to proceed to complete the transaction.

(5) Where the consideration remains unpaid after the date not later than which it is to be paid, the crofting community body's application under section 73 above in relation to the land or interests shall be treated as withdrawn.

(6) Any heritable security which burdened the land immediately before title is granted to the crofting community body in pursuance of this section shall, on the recording of that title in the Register of Sasines or registration in the Land Register of Scotland of the body's interest in the land, cease to do so.

(7) Where such a security also burdens land other than the land in respect of which title is granted to the crofting community body, the security shall not, by virtue of subsection (6) above, cease to burden that other land.

(8) Unless the creditors in right of any such security otherwise agree, the crofting community body shall pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the crofting community body as consideration for the land or interests.

(9) Any sum paid by a crofting community body under subsection (8) above shall be deducted from the sum which the body is to pay to the owner as consideration for the land.

CHAPTER 3

VALUATION OF CROFT LAND

88 Assessment of value of croft land etc.

(1) Where Ministers consent to an application under section 73 above, they shall, subject to subsection (2) below, within 7 days of doing so appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to have knowledge and experience of valuing land or sporting interests of a kind which is similar to the land or sporting interests being bought, to assess the value of the land or sporting interests to which the application relates.

(2) Where Ministers refer a question to the Land Court under section 83(2) above they shall delay appointing the valuer until a day which is within 7 days of the day on which the Land Court makes its determination in respect of that reference.

(3) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1) above.

(4) In assessing the value of land or interests in pursuance of an appointment under subsection (1) above, a valuer—

(a) does not act on behalf of the owner of the land or person entitled to the interests or of the crofting community body which is exercising its right to buy the land or interests under this Part of this Act; and

(b) shall act as an expert and not as an arbiter.

(5) The value to be assessed is the market value of the land or interests as at the date when Ministers consented to the application under section 73 relating to the land or interests.

(6) The "market value" of land or interests is the aggregate of—

(a) the value it or they would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing;

(b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of land or interests, including depreciation caused by division of the land or interests by the transfer of land or interests to the crofting community body; and

(c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land or interests to the crofting community body.

(7) In arriving, for the purposes of this section, at the value which land or interests would have on the open market in the circumstances mentioned in subsection (6)(a) above—

(a) account may be taken, in so far as a seller and buyer such as are mentioned in subsection (6) above would do so, of any factor attributable to the known existence of a person who (not being the crofting community body which is exercising its right to buy the land or interests) would be willing to buy the land or interests at a price higher than others would because of a characteristic of the land or interests which relates peculiarly to that person's interest in buying it;

(b) no account shall be taken of—

(i) any depreciation of the type mentioned in subsection (6)(b) above;

(ii) any disturbance of the type mentioned in subsection (6)(c) above;

(iii) the absence of the period of time during which the land or interests would, on the open market, be likely to be advertised and exposed for sale.

(8) The expense of a valuation under this section shall be met by Ministers.

(9) In carrying out a valuation under this section, the valuer shall invite the owner of the land or person entitled to the interests and the crofting community body which is exercising its right to buy the land or interests to make representations in writing about the value of the land or interests and shall consider any representations made accordingly.

(10) Where the crofting community body and the owner of the land or person entitled to the interests have agreed the valuation of the land or interests they shall notify the valuer in writing of that valuation.

(11) Where sporting interests in land which the body are seeking to buy are to be leased back to the owner of the land, the valuer shall, in assessing the value of those interests, take account of the terms and conditions of the lease which has been agreed between the owner and the body or, as the case may be, determined by the Land Court under section 83 above.

(12) The valuer shall, within the period set out in subsection (13) below, notify Ministers, the owner of the land or person entitled to the interests and the crofting community body which is exercising its right to buy the land or interests of the assessed value of the land or interests.

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(13) The period referred to in subsection (12) above is the period of 6 weeks beginning with the date of appointment of the valuer or such longer period as Ministers may, on an application by the valuer, fix.

(14) The validity of anything done under this Part of this Act is not affected by any failure by a valuer to comply with the time limit specified in subsection (13) above.

VALID FROM 25/06/2007

[F9 88A Acquisition of interest of tenant over land: allocation of rents etc.

(1) Where an application made by virtue of subsection (2) of section 69A above does not relate to the entire tenanted land ("tenanted land" being construed in accordance with subsection (1) of that section), any resultant question as to the allocation, as between the tenant and the crofting community body, of rents payable or receivable, or as to the allocation as between them of rights and obligations generally, is to be determined by the valuer when, in pursuance of an appointment under section 88(1) above, he assesses the value of the interest of the tenant.

(2) Any determination under subsection (1) above is to be such as the valuer considers equitable in all the circumstances.**]**

Textual Amendments

F9 S. 88A inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 31(3)**, 43, (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.

89 Compensation

(1) Any person, including an owner or former owner of land or person entitled to sporting interests, who has incurred loss or expense—

(a) in complying with the requirements of this Part of this Act following upon the making of an application under section 73 above by a crofting community body;

(b) as a result of the withdrawal by the crofting community body of its confirmation under section 85 above or its failure otherwise to complete the purchase after having so confirmed its intention under that section; or

(c) as a result of the failure of the crofting community body which made that application to complete the purchase,

is entitled to recover the amount of that loss or expense from the crofting community body.

(2) There is no such entitlement, however, where the application under section 73 above is refused.

(3) Where such an application has been refused, the owner of the land or person entitled to the interests who has incurred loss or expense as mentioned in subsection (1)(a) above is entitled to recover the amount of that loss or expense from Ministers.

(4) Ministers shall, by order, provide as to the procedure under which claims for compensation under this section are to be made.

(5) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by an order under subsection (4) above, any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Land Court.

90 Grants towards crofting community bodies' liabilities to pay compensation

(1) Ministers may, in the circumstances set out in subsection (2) below, pay a grant to a crofting community body.

(2) Those circumstances are—

(a) that after settlement of its other liabilities connected with the exercise of its right to buy land or sporting interests under this Part of this Act, the crofting community body has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 89 above;

(b) that the crofting community body has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money; and

(c) that it is in the public interest that Ministers pay the grant.

(3) The fact that all the circumstances set out in subsection (2) above obtain in a particular case does not prevent Ministers from refusing to pay a grant in that case.

(4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.

(5) Ministers may pay a grant under this section only on the application of a crofting community body.

(6) An application for such a grant shall be made in such form and in accordance with such procedure as are prescribed.

(7) Ministers shall issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.

(8) Ministers' decision on an application under this section is final.

CHAPTER 4

APPEALS

91 Appeals

(1) The owner of the land or person entitled to the sporting interests to which an application under section 73 above relates and any other person within subsection (2) below may, by summary application, appeal to the sheriff against Ministers' decision to consent to the application.

(2) The persons within this subsection are—

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(a) any person who is a member of the crofting community defined in relation to the applicant crofting community body in pursuance of section 71 above;

(b) any person who has any interest in the land or sporting interests giving rise to a right which is legally enforceable by that person; and

(c) any person who was invited, under section 73(8)(a) above, to send views to Ministers on the application.

(3) The applicant crofting community body may, by summary application, appeal to the sheriff against Ministers' decision to refuse its application under section 73 above.

(4) Subsection (3) above does not extend to Ministers' decision under section 76 above upon which of two or more applications to buy the same land they should consent to.

(5) An appeal under subsection (1) or (3) above may be made only on a question of law and shall be lodged within 28 days of the date on which Ministers decided to consent to, or refuse, the application.

(6) The sheriff in whose sheriffdom the land or any part of it is situated or the sporting interests or any part of them are exercisable has jurisdiction to hear an appeal under this section.

(7) The sheriff shall dispose of an appeal under this section by ordering that Ministers' decision be adhered to or reversed and such an order shall have the same effect as if it were a decision taken by Ministers on the application.

(8) Such an order is final.

(9) Where the effect of such an order is the same as granting the application, the order may be made subject to any condition to which Ministers could have made their decision subject under section 80 above.

(10) An order having the effect mentioned in subsection (9) above shall be consistent with any decision or findings of the Land Court under sections 77 or 81 above.

92 Appeals to Land Court: valuation

(1) The owner of land or person entitled to the sporting interests the value of which has been assessed under section 88 above and the crofting community body which is exercising its right to buy the land or interests may appeal to the Land Court against the valuation.

(2) An appeal under this section shall state the grounds on which it is being made and shall be lodged within 21 days of the date of notification under section 88(12) above.

(3) In an appeal under this section, the Land Court may reassess the value of the land or interests.

(4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.

(5) The Land Court shall give reasons for its decision on an appeal under this section and shall issue a written statement of these reasons within 4 weeks of the hearing of the appeal.

(6) The validity of anything done under this Part of this Act is not affected by any failure of the Land Court to comply with the time limit specified in subsection (5) above.

(7) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.

93 Agreement as to matters referred or appealed

An appeal under sections 91 or 92 above does not prevent the parties from settling or otherwise agreeing the matter in respect of which the appeal was made between or among them.

CHAPTER 5

GENERAL AND MISCELLANEOUS PROVISIONS

94 Register of Crofting Community Rights to Buy

(1) The Crofters Commission shall set up and keep (or secure that there is set up and kept) a register to be known as the Register of Crofting Community Rights to Buy (the "crofting register").

(2) The crofting register shall be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each application to exercise the right to buy registered in it—

(a) the name and address of the registered office of the company which constitutes the crofting community body which has submitted the application;

(b) a copy of the application;

(c) a copy of Ministers' decision consenting or refusing to consent to the exercise of the right to buy;

(d) a copy of—

(i) any notice of withdrawal by the crofting community body of an application to exercise the right to buy;

(ii) any notice of confirmation by the body of its intention to proceed to exercise that right;

(iii) any notice withdrawing that confirmation; and

(iv) any acknowledgement by Ministers of receipt of notice such as is mentioned in sub-paragraphs (i) to (iii) above; and

(e) such other information as Ministers consider appropriate.

(3) Ministers may, by order, modify paragraphs (a) to (e) of subsection (2) above.

(4) Any person who, under this Part of this Act, provides a document or other information, or makes a decision, which or a copy of which is to be registered in the crofting register shall, forthwith on providing the document or other information or, as the case may be, making the decision, give it or a copy of it to the Crofters Commission for the purpose of allowing it to be so registered.

(5) The Crofters Commission shall ensure—

(a) that the crofting register is, at all reasonable times, available for public inspection free of charge;

(b) that members of the public are given facilities for getting copies of entries in the crofting register on payment of reasonable charges;

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(c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.

(6) An extract so certified shall be sufficient evidence of the original.

95 Avoidance of disposal other than to crofting community body

(1) It is not competent for the owner of the land or person entitled to the interests to which an application under section 73 above relates to dispose of the land or interests after the consent date to any person other than the crofting community body which made the application.

(2) Subsection (1) above has no effect where the crofting community body has withdrawn the application or has otherwise decided not to proceed to exercise its right to buy the land or interests.

(3) In subsection (1) above, "consent date" has the same meaning as in section 87 above.

96 Limitation on effect of this Part

Nothing in this Part of this Act—

(a) affects any rights given by or under the 1993 Act or prevents a crofting community body from being a landlord for the purposes of that Act; or

(b) prevents a crofting community body from having and exercising power to acquire land or other property otherwise than under it.

97 Scottish Land Court

(1) Subject to sections 79 and 91 above, the Land Court shall have jurisdiction to hear and determine all matters, whether of law or fact, which arise under this Part of this Act and, subject to section 1(7) of the Scottish Land Court Act 1993 (c. 45) (referral of question of law to Inner House of the Court of Session), the decision of the Land Court in any case shall be final.

(2) In section 1(7) of that Act of 1993, after the word "enactment" there is inserted ", or under Part 3 of the Land Reform (Scotland) Act 2003 (asp 2),".

(3) Paragraph 6(2) of Schedule 1 to that Act of 1993 (appeal against order or determination arrived at under a delegation of Land Court's powers) does not apply in relation to any order made, or determination arrived at, in pursuance of a matter which arises under this Part of this Act.

VALID FROM 25/06/2007

[F10 97A Construction of certain references to "tenant"

In this Part, "tenant", in any case where the reference is not to a tenant of a croft, includes sub-tenant (analogous expressions being construed accordingly).**]**

Textual Amendments

F10 S. 97A inserted (25.6.2007) by Crofting Reform etc. Act 2007 (asp 7), **ss. 31(4)**, 43, (with ss. 40, 43(2)); S.S.I. 2007/269, **art. 2**, Sch.

PART 4

GENERAL AND SUPPLEMENTARY

98 General and supplementary provisions

(1) In this Act—

"Land Court" means the Scottish Land Court;

"Lands Tribunal" means the Lands Tribunal for Scotland;

"Ministers" means the Scottish Ministers;

"prescribed" means prescribed by regulations made by Ministers.

(2) Any power of Ministers under this Act to make an order or regulations shall be exercisable by statutory instrument.

(3) Any such power includes power to make—

(a) such incidental, supplementary, consequential, saving or transitional provision as Ministers think necessary or expedient;

(b) different provision for different cases and for different classes of case.

(4) Subject to subsection (5) below, a statutory instrument containing an order (other than an order made under section 100 below) or regulations made under this Act shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) A statutory instrument containing an order made under section 4, 8, 33, 36, 42, 78 or 94 above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

(6) Any requirement or other provision in this Act for or about the sending or making of any application, invitation, response, confirmation, notice or other document, or any copy of such a document, shall be taken to have been complied with if the document was posted by recorded delivery post or such other postal service as is referred to in paragraph 3 of Schedule 8 to the Postal Services Act 2000 (c. 26).

(7) Subject to subsection (8) below, the effective date of any application, invitation, response, confirmation, notice or other such document sent by such post shall be—

(a) the day after the date it was posted; or

(b) where any period in this Act is to be calculated from or with reference to the date of making or sending the application, invitation, response, confirmation, notice or document, that date.

(8) Nothing in subsection (7) above affects the requirements in sections 37(9), 49(4) and 52(3) above by which the responses there referred to are to be received by Ministers within a certain time.

99 Amendments, repeals and savings

The enactments specified in schedule 2 to this Act have effect subject to the modifications there specified and the repeals there specified have effect subject to the savings there specified.

Commencement Information

I1 S. 99 partly in force; s. 99 not in force at Royal Assent see s. 100(3); s. 99 in force for certain purposes at 14.6.2004 by S.S.I. 2004/247, **art. 2(a)**

100 Short title, Crown application and commencement

(1) This Act may be cited as the Land Reform (Scotland) Act 2003.

(2) This Act binds the Crown.

(3) This Act (except this section and section 98 above) comes into force on such day as Ministers may by order appoint.

(4) Different days may be so appointed for different purposes.

Subordinate Legislation Made

P1 S. 100(3) partly exercised; 30.9.2003 appointed for specified provisions by S.S.I. 2003/427, **art. 2**

P2 S. 100(3) partly exercised; 14.6.2004 appointed for specified provisions and purposes by S.S.I. 2004/247, **art. 2**

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SCHEDULE 1

(introduced by section 22(8))

PATH ORDERS

Procedure

Procedure

1 Before making a path order, the local authority shall give notice of their intention to do so, together with a copy of the proposed order, to the owner of the land within which is the path proposed for delineation by the order (the "owner").

2 That notice shall specify—
(a) a time, being not later than 28 days after the giving of the notice, within which; and
(b) the manner in which,
objections to the proposed order may be made by the owner to the local authority.

3 If no such objections are made or any made are withdrawn, and the local authority make the order, it shall have effect.

4 If, however, an objection is made and not withdrawn, the order if made shall not have effect unless confirmed by Ministers.

5 Ministers—
(a) may; and
(b) if any objection made is not withdrawn, shall,
afford the owner an opportunity of being heard by a person appointed by Ministers for the purpose.

6 Ministers shall, after considering the report of that person, either confirm or decline to confirm the order and, where they confirm it, may do so with modifications.

7 On its confirmation, the path order shall have effect.

8 As soon as a path order has effect, the local authority shall give notice of that fact to the owner together with a copy of the order.

Statutory undertakings

Statutory undertakings

9 No path order shall be made which would delineate a path over land in or over which there is apparatus belonging to or used by any statutory undertaker for the purpose of the undertaking unless the undertaker has consented to the making of the order.

10 Such consent shall not be unreasonably withheld and any question whether it is so withheld shall be determined by Ministers.

11 The operator of any **[**[F11]electronic communications code network**]** for the purposes of which apparatus was kept installed in, under or over a path immediately before the path creation order which delineated the path was revoked retains after that revocation the same powers as before it; but the owner is entitled to require the alteration of the apparatus.

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Textual Amendments

F11 Words in Sch. 1 para. 11 substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 3(1), **Sch. 1 para. 15(3)(a)**

12 Paragraph 1(2) of the **[**[F12]electronic communications code**]**(alteration of apparatus to include moving, removal or replacement of apparatus) applies for the purposes of paragraph 11 above as it applies for the purposes of the code.

Textual Amendments

F12 Words in Sch. 1 para. 12 substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 3(1), **Sch. 1 para. 15(3)(b)**

13 Paragraph 21 of that code (restriction on removal of apparatus) applies in relation to any entitlement conferred by paragraphs 11 and 12 above to require the alteration, moving or replacement of any **[**[F13]electronic communications apparatus**]** as it applies in relation to an entitlement to require the removal of any such apparatus.

Textual Amendments

F13 Words in sch. 1 para. 13 substituted (17.9.2003) by The Communications Act 2003 (Consequential Amendments) Order 2003 (S.I. 2003/2155), art. 3(1), **Sch. 1 para. 15(3)(c)**

SCHEDULE 2

(introduced by section 99)

AMENDMENT AND REPEAL OF ENACTMENTS

Trespass (Scotland) Act 1865 (c. 56)

1 Section 3 (which creates the offence of occupying or camping on land without the consent of its owner or occupier) of the Trespass (Scotland) Act 1865 is renumbered as subsection (1) of that section and after that subsection there is added—

"(2) Subsection (1) above does not extend to anything done by a person in the exercise of the access rights created by the Land Reform (Scotland) Act 2003 (asp 2)."

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42)

2 In section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, after paragraph (d) there is inserted—

"(e) by the Scottish Ministers under section 35 or 72 of the Land Reform (Scotland) Act 2003 (asp 2);".

Countryside (Scotland) Act 1967 (c. 86)

Countryside (Scotland) Act 1967 (c. 86)

3 The Countryside (Scotland) Act 1967 is amended as follows.

4 Subject to paragraphs 6 and 7 below, the following provisions—

(a) Part II (access to open country);

(b) sections 30 to 38 (creation, closure and diversion of public paths);

(c) section 43 (ploughing of rights of way);

(d) in section 54 (byelaws), in subsection (6), the words "or the next and succeeding section";

(e) section 55 (default powers); and

(f) in Schedule 3 (which includes provision for making and confirming access orders under Part II), in sub-paragraph (1) of paragraph 1, the words "an access order", in sub-paragraph (3) of that paragraph the words "an access order or" and in sub-paragraph (1A) of paragraph 2, the words from "as" to "order", where thirdly occurring,

are repealed.

5 In section 47 (interpretation of Part III which deals with paths, routes and rights of way) there is inserted at the end "and references to a right of way do not include references to access rights within the meaning of section 1 of the Land Reform (Scotland) Act 2003 (asp 2)".

6 The coming into force of the repeal of Part II does not—

(a) prevent compensation thereafter being claimed or becoming payable under section 21 of the Act (compensation for depreciation or disturbance as a result of access order to be assessed only after five years' operation of order); or

(b) otherwise affect the operation thereafter of sections 21 to 23 and 70 of that Act in relation to claims for or payment of compensation.

7 Notwithstanding the repeal of section 30 to 38, those sections continue to have effect—

(a) to the extent that the rights and facilities afforded to the public under those sections are not secured by section 1 above;

(b) in relation to land in respect of which access rights are, under section 6 above, not exercisable; and

(c) in relation to rights of way.

Civic Government (Scotland) 1982 (c. 45)

8 The Civic Government (Scotland) Act 1982 is amended as follows—

(a) in section 120 (savings for Crown and other rights), the words from "and, with respect" to the end are repealed;

(b) in section 121 (control of the seashore, adjacent waters and inland waters)—

(i) subsection (4); and

(ii) in subsection (5), paragraph (iii),

are repealed;

(c) in section 121, in subsection (11), for the words from "adjacent" to the end there is substituted "and adjacent waters."; and

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(d) in section 123 (interpretation), the words from " "inland waters"" to "banks thereof;" are repealed.

Public Order Act 1986 (c. 64)

9 In section 14A (prohibiting trespassory assemblies) of the Public Order Act 1986, after subsection (9) there is inserted—

"(9A) In relation to Scotland, the references in this section to the public's rights (or limited right) of access do not include any right which the public or any member of the public may have by way of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2).".

Criminal Justice and Public Order Act 1994 (c. 33)

Criminal Justice and Public Order Act 1994 (c. 33)

10 The Criminal Justice and Public Order Act 1994 is amended as follows.

11 After section 61(4) (circumstances in which persons who, although not originally trespassers on land, have become such may be directed by police to leave) there is inserted—

"(4A) Where, as respects Scotland, the reason why these persons have become trespassers is that they have ceased to be entitled to exercise access rights by virtue of—

(a) their having formed the common purpose mentioned in subsection (1) above; or

(b) one or more of the conditions specified in paragraphs (a) and (b) of that subsection having been satisfied,

the circumstances constituting that reason shall be treated, for the purposes of subsection (4) above, as having also occurred after these persons became trespassers.

(4B) In subsection (4A) above "access rights" has the meaning given by the Land Reform (Scotland) Act 2003 (asp 2).".

12 In section 64 (which, amongst other things, confers powers on the police to seize and remove sound equipment brought or brought back on to land after a removal direction under section 63) there is inserted after subsection (5)—

"(5A) Entering land in Scotland with sound equipment in the circumstances mentioned in subsection (4)(b) above is not an exercise of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2).".

13 In section 68 (offence of aggravated trespass) after subsection (1) there is inserted—

"(1A) The reference in subsection (1) above to trespassing includes, in Scotland, the exercise of access rights (within the meaning of the Land Reform (Scotland) Act 2003 (asp 2)) up to the point when they cease to be exercisable by virtue of the commission of the offence under that subsection.".

Status: *Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Land Reform (Scotland) Act 2003. (See end of Document for details)*

The Conservation (Natural Habitats, Etc.) Regulations 1994 (S.I. 1994/2716)

The Conservation (Natural Habitats, Etc.) Regulations 1994 (S.I. 1994/2716)

14 The Conservation (Natural Habitats, Etc.) Regulations 1994 are amended as follows.

15 In regulation 3(2) there is inserted at the end—

"Part 1 of the Land Reform (Scotland) Act 2003 (asp 2) (access rights)."

16 After regulation 69 there is inserted—

Core and other paths

"69A(1) Regulations 48 and 49 (requirement to consider effect on European site) apply in relation to a local authority's proposal—

(a) to draw up or change a plan for core paths under section 17 of the Land Reform (Scotland) Act 2003 (asp 2);

(b) to enter a path agreement under section 21 of that Act;

(c) to create or maintain a path delineated under such an agreement;

(d) as to how any such path is to be created or maintained;

(e) to make a path order under section 22 of that Act;

(f) as to how any path delineated under such an order is to be created or maintained.

(2) Regulations 50 and 51 (requirement to review certain decisions) apply to any decision by a local authority in relation to any of the things mentioned in paragraph (1).".

Town and Country Planning (Scotland) Act 1997 (c. 8)

17 After subsection (3) of section 208 of the Town and Country Planning (Scotland) Act 1997 there is inserted—

"(4) This section applies in relation to any land which is a core path (within the meaning of Part 1 of the Land Reform (Scotland) Act 2003 (asp 2)) as it applies in relation to footpaths and bridleways.".

Status:
Point in time view as at 01/04/2006. This version of this Act contains provisions that are not valid for this point in time.

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