

LAND REFORM (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 2 the Community Right to Buy

Section 33: Registrable land

125. This section describes the land in which a community body may register an interest as being any land other than land which is excluded by order made by Ministers. Ministers must, in determining which land is excluded, secure that land which appears to them to be non-rural is excluded. Section 98(5) provides that an order excluding land may not be made unless a draft of it has been approved by a resolution of the Scottish Parliament.
126. Subsection (4) requires an order excluding land from being registrable land to either include a map showing the boundaries of the land excluded or to refer to a map which shows those boundaries. If the order follows the latter course Ministers under subsection (5), are required to make copies of the map which the order refers to available for public inspection whenever and wherever they think fit.
127. Subsections (6) and (7) confirm that a community interest may be registered in salmon fishings or mineral rights (but not in rights to oil, gas, gold or silver) which are owned separately from the land to which they relate (unless they relate to excluded land).

Section 34: Community bodies

128. Subsection (1) prescribes that a community body must be a company limited by guarantee and lists the requirements which must be included in its memorandum and articles of association.
129. Subsection (2) allows Ministers discretion over the minimum number of members a community body must have.
130. Subsection (3) defines a “company limited by guarantee”, by reference to the [Companies Act 1985 \(c.6\)](#), as meaning a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.
131. Subsection (4) provides that a community body cannot be recognised as such until Ministers are satisfied that its main purpose is consistent with furthering the achievement of sustainable development.
132. Subsection (5)(a) provides that the memorandum and articles of association of a community body must define the community to which it relates by reference to postcode units. Subsection (5)(b) sets down criteria for determining which persons comprise a community. However, Ministers may direct that a community body is to define the community to which it relates by reference to different criteria. They may also direct that criteria other than that set out in subsection (5)(b) be used to determine which persons comprise a community.

133. Subsection (7) states, for the avoidance of doubt, that the memorandum and articles of association of a community body may prevent its assets from passing, on a winding up of the body, to any body which is not a charity. Subsection (8) defines “charity”, for the purposes of this section, as being a body which is entitled to describe itself as a Scottish charity.

Section 35: Provisions Supplementary to Section 34

134. Subsection (1) prohibits any community body, which has either registered an interest in land or acquired land under Part 2, from amending its memorandum or articles of association without Ministers’ written consent.
135. Subsection (2) allows Ministers to instruct the deletion from the Register of a registered interest in land where they are satisfied that the community body which registered it no longer satisfies the required criteria (set out in section 34) for being a community body.
136. Subsection (3) provides Ministers with a right of compulsory purchase over land acquired under Part 2. The right arises where Ministers are satisfied that the body which bought the land would, were it seeking to buy the land at a later date, not be entitled to buy it under Part 2. Any such acquisition will, by virtue of the amendment made to the [Acquisition of Land \(Authorisation of Procedure\)\(Scotland\) Act 1947 \(c.42\)](#) by paragraph 2 of Schedule 2 to this Act, be carried out in accordance with the procedures set out in that Act.

Section 36: Register of Community Interests in Land

137. [Section 36](#) requires the Keeper of the Registers of Scotland, or such other person as may be designated by Ministers, to set up and maintain a Register of Community Interests in Land.
138. Subsection (2) sets out in detail the information and documents which the Register must contain. It also specifies that the Register shall be maintained in such a manner as to be suitable for public inspection.
139. Subsections (3) and (4) allow the community body to request that information or documents relating to fundraising proposals in connection with land be withheld from public inspection. Any information or document which is the subject of such a request must be kept separately from the Register.
140. Subsection (5) makes clear that there is no compulsion on the community body to supply Ministers with any documentation or information relating to its fundraising arrangements. However, the community body is free to do so if it wishes, for example as part of its plan.
141. Subsection (6) gives Ministers power to modify, by order, provisions contained in subsections (2), (3) and (4). Section 98(5) provides that no such order may be made unless a draft of it is approved by a resolution of the Scottish Parliament.
142. Subsection (7) sets out requirements for public access and retrieval of information from the Register.
143. Subsection (8) provides that a certified extract of an entry from the Register carries the same weight of evidence as an original.
144. Subsection (10) allows Ministers to appoint different persons to carry out different functions in relation to the Register.

Section 37: Registration of interest in land

145. [Section 37](#) sets out the process for registering an interest in land and sets out the roles of the community body, Ministers, the owner and any heritable creditor in relation to any such registration.

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(asp 2) which received Royal Assent on 25 February 2003*

146. Subsection (1) provides that a community interest may be registered only on the application of a community body. The form and contents of an application, and details of information which must accompany an application, will be prescribed by regulations made by Ministers.
147. In terms of subsection (2), a community body applying to register an interest in land must notify Ministers of the existence of any standard security over the land in question. The notice must be in the form prescribed by regulations made by Ministers.
148. Subsections (3) and (4) provide that, where the owner of land to which an application relates or, as the case may be, a creditor in a standard security over an interest in the land is unknown or cannot be found, Ministers are relieved of certain of their duties under this section in relation to that person.
149. Subsections (5) to (12) set out the procedure to be followed by Ministers on receipt of an application from a community body. They must seek and consider the views of the owner of the land to which the application relates (and the views of the applicant on the owner's views). Subsection (5)(c) requires Ministers to ascertain whether a creditor with an interest in land to which an application relates has taken steps to enforce the security in terms of the [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c.35\)](#) and, if so, to involve that creditor in the process
150. In terms of subsection (5)(e), Ministers must, by notice, prohibit the owner of land to which an application relates and any creditor in a standard security over the land from transferring or taking any action to transfer the land (other than by way of a transfer to which section 40(1) does not apply) whilst Ministers are in the process of determining the application. In terms of subsection (8), a transfer in breach of such a prohibition is of no effect.
151. Subsection (13) provides that more than one community body may register an interest in the same area of land.
152. Subsections (14) to (16) allow a community body to register an interest in more than one holding of land, but a separate application is required for each holding. Subsections (17) to (19) set out the timescale and the procedure for Ministers to notify the community body, the owner of the land and any creditor with a right to sell of their decision whether or not to register the community interest. Subsection (20) requires Ministers to direct the entry of an interest in the Register with effect from the date of their decision that it should be entered.

Section 38: Criteria for registration

153. This section sets out matters on which Ministers must be satisfied before approving the registration of a community interest.
154. Subsection (2) specifies the necessary level of support which is required within a community to justify registration by Ministers and allows for Ministerial discretion when the level of support is less than that specified.

Section 39: Procedure for late applications

155. This section applies in relation to applications which are made after the owner of land to which the application relates has taken an action to transfer the land but before missives are concluded, or an option to acquire is granted, in pursuance of that action ("late applications").
156. [Sections 37](#) and [38](#) apply in relation to late applications but subsection (2) requires the owner of land to which a late application relates to notify Ministers of that fact and thereby shorten the period for Ministers to make their decision.

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157. Subsection (3) sets out matters on which Ministers must be satisfied, in addition to the matters set out in section 38, before approving a late registration.
158. Subsection (4) provides that, where Ministers decide on a late application that a community interest is to be registered, the community body's right to buy the land under this Part is to be treated as having been activated under section 47 and the community body is to be treated as having confirmed its intention to proceed to buy the land.
159. Subsection (5) provides that Ministers must decline the application if it is received after the date of conclusion of missives or after an option to acquire the land has been conferred but before the transfer in pursuance of those missives or that option.

Sections 40 and 41: Effect of Registration

160. Section 40 prohibits an owner or, as the case may be, any creditor in a standard security with a right to sell the land, from transferring land which is subject to a registered interest (or any land which forms part of such land) other than in accordance with Part 2. Owners and heritable creditors are similarly prohibited from taking any action with a view to transferring such land.
161. Subsection (2) makes clear that a transfer in breach of the prohibition in terms of section 40(1) shall not constitute a legal transfer of title to the land.
162. Subsection (3) provides that a prohibition under subsection (1) prevents the transfer, and actions to transfer, land in which there is no registered interest if the transfer, or such action, also relates to registered land.
163. Subsection (4) lists types of transfer which are not prohibited by this section. Such a transfer would not activate a right to buy under Part 2.
164. Subsection (5) narrates what constitutes action taken with a view to a transfer of land.
165. Subsection (6) amends section 25 of the [Conveyancing and Feudal Reform \(Scotland\) Act 1970 \(c.35\)](#) to provide that the right of a creditor in a standard security to sell land in respect of which an interest is registered (or an application for such an interest has been made) is subject to a prohibition on transfer imposed by sections 37(5)(e) or 40(1) of the Act.

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

166. This section allows Ministers to modify by order the provisions of Section 40(4) and (5) and 41, which respectively describe what constitutes an excluded transfer and what constitutes action with a view to a transfer. Section 98(5) provides that no such order may be made unless a draft of it has been approved by a resolution of the Scottish Parliament.

Section 43: Anti-avoidance provisions

167. Subsection (1) prevents owners of land from avoiding the effect of Part 2 by claiming entitlement to the benefit of certain exempt categories where the transfer in question is part of a scheme or arrangement intended to avoid any requirement or consequence of Part 2. Subsection (2) states the declaration which is required to be included in a deed transferring land when an exemption is claimed.

Section 44: Duration and renewal of registration

168. Subsection (1) provides that a community interest, once registered, shall endure for 5 years from the date of that registration.
169. Subsections (2) and (3) provide that community bodies may apply to Ministers to re-register their interest at any time during the last 6 months of the 5 year period. Ministers

must have regard to the criteria specified in section 38 when considering an application for re-registration.

170. Subsection (4) provides that re-registration will be effective for 5 years from the date on which the previous registration would have expired.
171. Subsection (5) provides that a registered interest in land will continue over the land, and be effective on the new owner, following an exempt transfer under section 40(4).

Section 45: Deletion of community interest in land

172. This section provides that Ministers may delete an entry from the Register where they are satisfied that, if the application were to be made again, it would be unsuccessful. Ministers are required to seek the views of both the owner of the land and the community body before deleting an entry under this section.

Section 46 : Re-registration of community interest

173. This section provides that a community body may apply again to register an interest in land where its previous registered interest has expired or has been deleted.

Section 47: Activation of right to buy

174. This section provides for the community right to buy land to proceed once the owner, or a creditor in a standard security with the right to sell the registered land, gives notice of a proposed transfer of that land.

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

175. **Section 48** provides that, where an owner of land, or a creditor in a standard security with a right to sell land, intends to transfer registered land (even where that registered land is only a part of the land which it is proposed to transfer), they are required to inform any community body with a registered interest in that land and Ministers in the manner prescribed by regulations. This activates the community body's right to buy.

Section 49: Procedure following receipt of notice under section 48

176. **Section 49** sets out the procedure to be followed once the owner of the land or the creditor in the standard security gives notice that they intend to transfer registered land. Ministers must have the notice entered on the Register and by notice require the community body to confirm whether or not it will exercise its right to buy.
177. Under subsection (4) the community body has 30 days from the date specified in the notice to confirm to Ministers that it intends to exercise its right to buy; failure to do so means that the right to buy falls.

Section 50: Power to activate Right to Buy land where breach of this Part

178. This section allows a community body to apply to the Lands Tribunal for Scotland ("the Lands Tribunal") to determine that a prohibition on transfer, or actions to transfer, registered land has, within ten years of the date of the application, been breached and that the applicant has, since the transfer or action, had a registered interest in the land in relation to which the breach occurred.
179. The Lands Tribunal must notify any such determination to Ministers, who must then give notice of the determination to every community body with a registered interest in the land to which the determination relates which had, or has applied for, such a registered interest at the time of the transfer or action. The effect of such a notice is to activate the community body's right to buy the land under Part 2.

180. Subsection (2) sets out the conditions which must apply before the right to buy may be conferred under this section. These conditions require that the transfer in breach occurred in the previous 10 years, that the land has remained registrable during that time, that the original interest which existed at the time of the breach is still registered, or a new interest has been registered in that land, and further that the community body with the registered interest (or which has at that time made an application to register its interest) at the time of the breach had not been subsequently offered and declined to exercise its right to buy.

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

181. Subsection (1) requires a community body which wishes to proceed to exercise a right to buy activated under section 47 to obtain the approval of the community which it represents and the consent of Ministers.
182. Subsection (2) provides that community approval is taken to be given if the majority of the members of the community vote, in a ballot held in accordance with section 52, in favour of the proposition (provided that at least half of those eligible to vote do so or, where less than half vote, a sufficient number to justify the community purchase do so).
183. Subsection (3) states the conditions that must be met before Ministers may give their consent.
184. Subsection (4) allows community bodies to require Ministers to treat information regarding financial arrangements provided to them as confidential.
185. Subsection (5) requires Ministers to notify, within 21 days of the last ballot by a community body which wished to exercise its right to buy, the community body and the owner of the land with their decision on whether to give consent. They must direct that their decision be recorded in the Register.

Section 52: Ballot procedure

186. **Section 52** provides that a ballot to determine the level of community support for the acquisition of land is to be conducted in the manner prescribed by regulations made by Ministers. If the ballot is not conducted in the required manner, the community body's right to buy falls.
187. Subsections (3) and (4) detail the ballot information to be returned to Ministers and the time limit for doing so.

Section 53: Provisions supplementary to section 51: salmon fishings and minerals

188. This section states that where the community body is exercising its right to buy salmon fishings or mineral rights, not only must Ministers be satisfied as to the matters specified in section 51(3), they must also be satisfied that the community body already owns, or is at the same time exercising its right to buy, the land to which the salmon fishings or mineral rights relate.

Section 54: Declinature or extinction of right to buy

189. This section allows a community body with a registered interest to decline the right to buy registered land at any time. This may be done by giving written notice to Ministers. The community body's interest will be deleted from the Register and the owner of the land notified.
190. Under subsection (3), if the right to buy has been activated before the community body decides not to exercise it, then the right to buy is extinguished together with the deletion of the registered interest.

191. Subsection (4) permits a community body to register its interest in the same land at a later date.
192. Subsection (5) allows the owner of the land to withdraw from a sale to a community body and extinguish an activated right to buy at any time before the conclusion of missives between the owner and the community body exercising that right. The owner may do so by giving written notice of withdrawal to Ministers and each community body with a registered interest. However, under these circumstances the registered interest remains.
193. Subsection (8) prevents the owner from extinguishing a right to buy which has arisen following a determination of the Lands Tribunal under section 50 that there has been a breach of the prohibitions relating to transfer of land in which a community has registered, or applied to register, an interest.

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

194. This section provides that only one community body may exercise the right to buy land in which two or more community bodies have registered an interest. Ministers must decide, under subsection (2), which community body should be allowed to exercise the right to buy, whereupon the other community body's right to buy falls and its interest is to be deleted from the Register. This procedure also applies where a community body and crofting community body seek the right to buy the same land under Parts 2 and 3 respectively.

Section 56: Procedure for buying

195. This section states that it is for the community body to make an offer to buy the land over which it has a right to buy. The offer must specify the purchase as being that agreed between the owner of the land and the community body or, failing such agreement as being the value assessed by the appointed valuer or determined in an appeal of that assessment.
196. Subsection (3) specifies how the date of entry and payment of the price are determined. A time limit of 6 months is set for the community body to pay the determined price. However, where the price is subject to an appeal which has not been agreed within 4 months of the community body having confirmed its intention to proceed, payment must be made within a further 2 months of the date of determination of the appeal, unless a later date has been agreed between the parties.
197. Under subsection (4), the offer may include other reasonable conditions.
198. Subsections (5) and (6) provide that where the community body has failed to conclude missives within the fixed or agreed time limits, or to take all reasonable steps towards so doing including making an application to the Lands Tribunal for an order under section 57, the right to buy falls and the community body's interest is to be deleted from the Register.

Section 57: Powers of Lands Tribunal in event of failure or delay

199. Subsection (1) allows the Lands Tribunal to take action where the transfer of title has been unreasonably delayed, either by the owner of the land or the community body, by ordering the party responsible for the delay to take remedial action within a specified time.
200. Under subsections (2) and (3), if a community body fails to comply with an order under subsection (1) and does not advise Ministers that they no longer wish to proceed with the transfer its right to buy the land may be extinguished by a further order by the Lands Tribunal and, if such an order is made, the community body's interest is to be deleted from the Register.

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201. Under subsection (4) if the owner of the land fails to comply with an order under subsection (1) and has not intimated that he or she no longer wishes to proceed, then the owner of the land may be compelled, by a further order by the Lands Tribunal, to transfer the land to the community body on the terms specified in the order.
202. Where the order to transfer the land is made against the owner of the land, in terms of subsection (4) and the owner of the land does not comply with such order, then under subsection (5), the Lands Tribunal may authorise its principal clerk to complete the transfer of the land on behalf of the owner.

Section 58: Procedure where right to buy activated under section 50(3)

203. **Section 50** provides for the activation of the right to buy where land in which a community body has registered, or applied to register, an interest has been transferred in breach of this Part of the Act. This section sets out the procedure for acquiring the land where the right to buy has arisen as a result of such a breach.
204. Subsections (2) to (6) outline the procedure for buying in place of the procedure under sections 56 and 57. It is for the community body to ensure that any necessary transfer documents are prepared, and that land being transferred is the same as that which is subject to the right to buy.
205. Subsection (3) states that the price is to be equal to the value assessed by the appointed valuer (subject to a right of appeal).
206. Subsection (4) requires the owner of the land to provide the documents needed for the transfer, and to transfer the land in question to the community body.
207. Where the owner of the land fails to co-operate, or where documents cannot be found, subsection (5) provides for the Lands Tribunal, at the request of the community body, to order the owner or such person as may hold the documents to produce them.
208. Subsection (6) provides that if the owner of the land fails to transfer the land to the community body, then the community body may apply to the Lands Tribunal for an order allowing its principal clerk to execute the conveyance and other documents.

Section 59: Assessment of value of land

209. This section covers the appointment of a valuer, and the valuation of the land to be transferred under Part 2.
210. Subsection (1) provides that Ministers are required to appoint a suitable person as a valuer within 7 days of the community body confirming that it wishes to exercise the right to buy.
211. Subsection (3) provides that the valuer is to act independently of the two parties and is to act as an expert rather than as an arbiter. The valuer will not be involved in any negotiations between the owner of the land and the community body in respect of the value of the land.
212. Subsection (4) states that the land is to be valued at market value at the date on which the owner notified Ministers of his/her intention to sell the land. In the case of a late application, valuation will be based on the date Ministers received the community body's application.
213. Subsection (5) requires that any salmon fishings or mineral rights shall be valued separately from the land to which they relate.
214. Subsection (6) defines market value for the purposes of this section.
215. Subsection (7) requires the valuer to take account of any person (other than the community body) willing to pay a higher price for the land than others because of a

particular characteristic of the land. It also lists factors which should have no bearing on the valuation.

216. Subsections (8) and (9) provide that, where any moveable property is being sold with the land, such moveable property should be included in the valuation. However, any such property should be valued individually.

Section 60: Procedure for valuation

217. Subsection (1) requires the valuer to invite and consider any written representations from the owner of the land and the community body relating to the value of the land.
218. Subsections (2) and (3) require the appointed valuer to notify Ministers, the owner of the land and the community body of the valuation within 6 weeks of the valuer's appointment, or within a longer period as determined by Ministers following an application from the valuer.

Section 61: Appeals

219. This section allows the owners of land, community bodies and other interested parties to appeal against certain decisions by Ministers by means of summary application to the sheriff.
220. Subsection (1) states that an owner of the land may appeal against Ministers' decision to approve a community body's application for registration, or to allow the community body the right to buy.
221. Subsection (2) enables a community body to appeal against Ministers' decision not to approve a community body's application for registration, or not to allow the exercise of the right to buy.
222. Under subsection (3), any person who is a member of the community to which a community body relates or any person who has a legally enforceable right in land may appeal against Ministers' decisions to enter an interest in the land in the Register or to consent to the exercise of a right to buy the land.
223. Subsection (4) sets a time limit of 28 days for lodging appeals.
224. Subsection (5) provides which sheriff has jurisdiction to hear appeals.
225. Subsection (6) provides details of who must be informed of an appeal.
226. Subsection (7) makes clear that a decision by a sheriff may result in the need to amend the Register and may result in conditions being imposed on those appealing. The sheriff's decision is final.

Section 62: Appeals to Lands Tribunal: valuation

227. This section allows the owner of the land or the community body to appeal against a valuation carried out under section 59 to the Lands Tribunal. Such an appeal must be lodged within 21 days of the valuer notifying the valuation decision.
228. Subsection (3) allows the Lands Tribunal to reassess the valuation independently.
229. Subsection (4) permits the valuer who made the valuation to be a witness in the appeal.
230. Subsection (5) provides that the Lands tribunal must begin an appeal hearing no later than the first sitting day following 4 months after the appeal is lodged.
231. Subsection (7) requires the Tribunal to give reasons for its decision on an appeal in writing within four weeks of the conclusion of the appeal hearing.

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232. Subsection (9) provides that Ministers are responsible only for the appointment of the valuer, and cannot be held responsible for the valuation. Ministers cannot therefore be required to give evidence at an appeal in relation to the valuation.
233. Subsection (10) allows Ministers to utilise the provisions of the [Lands Tribunal Act 1949 \(c.42\)](#) to make new rules as required to enable appeals to be made and heard under this section.

Section 63: Compensation

234. This section deals with the payment of compensation to persons, except community bodies, who have suffered loss or expense arising from the operation of Part 2.
235. Subsection (1) sets out the circumstances in which compensation is payable by Ministers.
236. Subsection (2) states that compensation will only cover the loss or expense incurred as a result of determining the date of entry in terms of section 56(3)(a) and (b) where it is of a type which would not normally be incurred had the sale of the land been to persons other than a community body.
237. Subsection (3) limits the payment of compensation to the period of operation of the community right to buy, which period expires 6 months from the date the community body confirmed exercise of its right to buy. In the event that the valuation is appealed, the period is extended to 2 months after the determination or settlement of the appeal. Compensation will not be paid to cover any longer period agreed between the seller and the community body.
238. Under subsection (4), any person who has incurred loss or expense due to their right of pre-emption, redemption or reversion having been suspended is entitled to compensation from Ministers.
239. Subsection (5) provides for the procedure for assessing loss and for calculating and recovering compensation to be prescribed by order made by Ministers.

Section 64: Compensation appeals

240. This section provides for an appeal to the Lands Tribunal against Ministers' decisions on compensation, and permits the Lands Tribunal, following such an appeal, to substitute its decision on the amount payable for that of Ministers.

Section 65: Effect of right to buy on other rights

241. Subsection (1) states the effect of the community right to buy in relation to pre-existing rights of pre-emption, redemption, or reversion. These rights are suspended when a community body confirms that it wishes to exercise its right to buy and revived when the transfer is completed or if the right to buy does not proceed for whatever reason.
242. Subsection (2) identifies specific statutory and related rights which are suspended during the right to buy process, but are revived in the same way as the rights described in subsection (1).
243. Subsection (3) makes clear that nothing in Part 2t affects inhibitions, adjudications or any other diligence.

Section 66: Amendment to the Land Registration (Scotland) Act 1979

244. This section amends the [Land Registration \(Scotland\) Act 1979 \(c.33\)](#) to require the Keeper to notify Ministers in the event that an application for registration in the Land Register has been rejected on the grounds that the Keeper believes that it relates to a transfer which is prohibited by this Part.

Section 67: Construction of references to land in which community interest registered

245. Subsections (1) provides that any references to land in which a community interest has been registered includes a reference to part of that land, while subsection (2) provide that a community body cannot exercise its right to buy in respect of only part of the registered land in which it had registered an interest.
246. Subsection (3) provides a specific definition of the meaning of any references in this Part of the Act to a creditor in a standard security with a right to sell.