

LAND REFORM (SCOTLAND) ACT 2003

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT – AN OVERVIEW

3. Part 1 establishes a right to be on land for recreational, educational and certain other purposes and a right to cross land. The rights exist only if they are exercised responsibly. Some of the provisions for that purpose are also extended in relation to rights of way and other rights. Part 1 imposes certain duties on local authorities in relation to access on and over land in their areas and, in particular, requires them to draw up and adopt a plan of core paths in their areas.
4. Part 2 confers on bodies representing rural communities a right to buy land with which the community has a connection. The right will arise in relation to land in which the body has registered an interest, when that land comes to be marketed or sold. Part 2 defines the land which can be bought under that Part, sets out the procedures for establishing a community body, for registering an interest in land. Part 2 also sets out the circumstances in which the right to buy is activated and the procedures for exercising it (including procedures for valuation of the land being bought, for appeals and for compensation).
5. Part 3 gives bodies representing crofting communities a right to buy certain land. It therefore defines the land that can be bought, who can buy it and how it is to be acquired. Nothing in Part 3 affects rights given by or under the Crofters (Scotland) Act 1993 (c.44). It does not prevent a crofting community body buying or owning any other land.

PART 1 ACCESS RIGHTS

Section 1: Access rights

6. This section establishes statutory rights of access to land for recreational purposes, for the purposes of carrying on a relevant educational activity, 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 and a right to cross land for the purpose of getting from one place to another (subsections (1) to (4)). “Relevant educational activity” is defined in subsection (5). “Land” is defined in section 32 to include bridges and other structures built on or over land, inland waters (including non-tidal parts of rivers and lochs), canals and the foreshore.

7. Subsection (6) clarifies that access rights apply above and below ground, as well as on the surface of the land. This means that access rights extend to such activities as caving and paragliding.

8. Subsection (7) provides that access rights are exercisable on and over all land other than land of the type described in section 6 or which is otherwise excluded under that section.

Section 2: Access rights to be exercised responsibly

9. Subsection (1) provides that access rights must be exercised responsibly.

10. Subsection (2) makes provision for determining what constitutes the responsible exercise of access rights. The presumption is that a person will be exercising access rights responsibly if they are not interfering unreasonably with the rights of others. Paragraph (a) goes on to provide that a person engaging in any conduct falling within section 9 or within any byelaw made under section 12(1)(a)(i) or does anything that undoes steps taken by Scottish Natural Heritage under section 29, will not be exercising access rights responsibly. Paragraph (b) also provides that regard will be had to whether a person has disregarded the guidance set out in the Scottish Outdoor Access Code which applies to persons exercising access rights or has disregarded any request by Scottish Natural Heritage under section 29.

11. Subsection (3) further clarifies what is meant by the reference to the responsible exercise of access rights.

Section 3: Reciprocal obligation of owners

12. This section places a reciprocal requirement on owners of land in respect of which access rights are exercisable to act responsibly in using and managing the land or otherwise conducting their ownership of it.

13. Subsection (2) makes provision for determining whether an owner is acting responsibly. The presumption is that an owner is acting responsibly if that owner is not interfering unreasonably with the exercise of access rights over their land. Paragraph (a) goes on to provide that a contravention of sections 14(1) or (3) or 23(2) is to be treated as being irresponsible.

These sections relate to actions undertaken for the purpose, or main purpose, of preventing or deterring the exercise of access rights; failure to comply with a notice in respect of such an action served by a local authority; and failure to give timeous notice to a local authority of the ploughing of a path, or failure to reinstate the path. In addition, contravention of any bylaw made under section 12(1)(a)(ii) is to be treated as being irresponsible. Paragraph (b) provides that regard will be had to whether the owner has disregarded guidance set out in the Access Code and incumbent on the owners of land.

14. Subsection (3) further clarifies what is meant by the reference to the use, management and conduct of the ownership of the land in a way, which is responsible.

Section 4: Modification of sections 9, 14 and 23

15. This section provides a power for Ministers to modify any of the provisions of sections 9, 14 and 23 by way of an order for the purposes of sections 2 and 3. Section 98(5) provides that such an order cannot be made unless a draft of it has been approved by the Scottish Parliament. Under subsection (2), such an order could apply generally or be restricted to certain areas or to certain classes of land or could apply to particular ways of exercising access rights or to particular types of land management activity. Subsection (3) requires Ministers to consult interested persons (or associations representing such persons) and such other persons as they think fit prior to making an order under subsection (1).

Section 5: Access rights, reciprocal obligations and other rules and rights

16. This section sets out the relationship between the access rights created by this Act and existing rights as well as making provision for the effect of access rights on occupiers' liability, subject to section 22(4). As a general rule, access rights will not diminish or displace existing rights.

17. Subsection (1) provides that the exercise of access rights does not of itself amount to trespass.

18. Subsection (2) provides that the operation of Part 1 of the Act will not affect the duty of care owed by an occupier to any person present on the land except where the land is a path delineated in a path order made under section 22 (section 22(4) makes provision which states that regard may be had to the duties imposed on a local authority making a path order to create and maintain a path by virtue of section 22(3), in order to determine whether a local authority has control of a path for the purposes of the Occupiers' Liability (Scotland) Act 1960 (c.30) . The duty of care imposed by that Act will apply in relation to persons exercising access rights but the extent of that duty is not affected (other than as mentioned above).

19. Subsections (3) and (4) provide that access rights do not diminish or displace existing rights of access to land or public rights in relation to the foreshore.

20. Subsection (5) provides that the exercise of access rights created by this Act over particular land will not by itself be used to claim a public right of way or servitude or a public right of navigation.

*These notes relate to the Land Reform (Scotland) Act 2003 (asp 2)
which received Royal Assent on 25 February 2003*

21. Subsection (6) provides that land over which access rights are exercisable is not, by virtue of that fact, a road for the purposes of the Roads (Scotland) Act 1984 (c.54).

22. Subsection (7) ensures that any person who, being on foot on any land over which access rights are exercisable—

obstructs, along with another or others, the lawful passage of any other person and fails to desist on being required to do so by a constable in uniform, or

wilfully obstructs the lawful passage of any other person,

is guilty of an offence under section 53 of the Civic Government (Scotland) Act 1982 (c.45).

Sections 6 and 7: Land over which access rights not exercisable

23. Section 6 sets out categories of land over which access rights are not exercisable and is supplemented by section 7.

24. Paragraph (a) of section 6(1) excludes from access rights buildings of all kinds and other structures, works, plant and fixed machinery, as well as caravans, tents or other places used to give a person privacy or shelter.

25. Paragraph (b)(i) and (ii) of that section excludes land surrounding and associated with non-domestic buildings, structures, works, plant and fixed machinery.

26. In relation to school buildings, paragraph (b) (iii) of that section excludes land contiguous to and used for the purposes of a school. School playing fields at some distance from a school are not covered by this exclusion but may be governed by the exclusion in section 6(1)(e). “School” is defined in section 7(4) by reference to the Education (Scotland) Act 1980 (c.44) and means an institution which provides primary or secondary education or education for children below school age.

27. Section 6(1)(b)(iv) excludes such land which is adjacent to a domestic building, caravan, tent or other similar place as is sufficient to give persons living there reasonable measures of privacy and enjoyment. Section 7(5) provides that the location and other characteristics of the place to which the land relates are, amongst other matters, relevant to determining how much land is sufficient in this context.

28. Section 6(1)(c) excludes private gardens to which there is a right of common access, such as Queen Street Gardens in Edinburgh.

29. Section 6(1)(d) provides that the regulation of public access by or under any other enactment is not diminished or replaced by access rights. There are, for example, other enactments which prohibit, exclude or restrict public access over military establishments and railways. Access rights will be subject to those regulations. Section 7(6) clarifies that this exclusion does not prevent access rights being exercised in a manner which would not

contravene the other enactment. Section 6(1)(e) excludes land which has been developed or set out as a sports or playing field or for a particular recreational purpose. Paragraph (a) of section 7(7) qualifies this exclusion in relation to sports and playing fields by providing that it applies only where the fields are being used. It further qualifies the exclusion in relation to other land developed or set out for a recreational purpose by providing that the exclusion does not apply in relation to access rights which would not interfere with the use to which the land is being put. Paragraphs (b) and (c) of that section provide that the section 6(1)(e) exclusion applies in relation to certain vulnerable surfaces including golf greens, bowling greens and other similar grass surfaces and certain types of artificial surfaces. Section 7(8) provides that certain developments undertaken for the purposes of fisheries management do not bring the land within section 6(1)(e).

30. Section 6(1)(f) provides that land in respect of which a charge was levied for public admission for at least 90 days prior to 31 January 2001 and for which a charge continues to be levied for the same period after that date, will be excluded from access rights. Section 7(9) further qualifies that provision by providing that persons who have had access to land without payment in the past can continue to do so.

31. Section 6(1)(g) and (h) excludes land on which building, civil engineering or other works are underway.

32. Section 6(1)(i) excludes land on which crops have been sown or are growing. Further clarification on the meaning of “land on which crops are growing” is provided in section 7(10).

33. Subsection (1) of section 7 provides that access rights are exercisable over land which is excluded by section 6 if that land is a core path, including core paths over land otherwise excluded from access rights.

34. Subsections (2) and (3) of that section limit the extent of the exclusion in section 6 in respect of land on which a development is being carried out which requires planning permission. Accordingly, the exclusion only applies while the development is being carried out and only to the extent that the development is in conformity with any planning permission.

Section 8: Adjustment of land excluded from access rights

35. This section confers power on Ministers to make an order modifying sections 6 and 7. Section 98(5) provides that they may not make such an order unless a draft has been approved by a resolution of the Scottish Parliament.

36. Subsection (2) provides that an order under subsection (1) may be made in general terms, or it may refer to particular areas, locations or classes of land in respect of which access rights are exercisable.

37. Subsection (3) requires Ministers to consult interested persons (or associations representing those persons) and such other persons as they think fit prior to making an order under subsection (1).

Section 9: Conduct excluded from access rights

38. This section sets out the conduct which is outwith the scope of access rights. Any person purporting to exercise access rights who engages in the conduct listed in this section will, by virtue of section 2(2)(a), be treated as not exercising those rights responsibly

39. Paragraph (e) provides that persons on land for the purposes of carrying on an activity commercially or for profit are to be treated as conducting themselves irresponsibly if they take away anything in or on the land for that purpose.

40. Paragraph (g) provides that access rights are not exercisable on land which is a golf course for any of the purposes specified in section 1(3). In other words, the Act provides only for a right to cross golf courses.

Section 10: The Scottish Outdoor Access Code

41. Subsection (1) places a duty on Scottish Natural Heritage to draw up the Scottish Outdoor Access Code setting out in relation to access rights guidance on the circumstances in which those exercising access rights and the owners of relevant land may be regarded as acting in a way that is either responsible or irresponsible.

42. Subsections (2) to (4) set out the procedures which apply in respect of the preparation and approval of the Access Code, including the requirement for ministerial approval.

43. Subsection (5) requires that any Code approved by Ministers must also be approved by a resolution of the Scottish Parliament before it comes into operation.

44. Subsection (7) places a duty on Scottish Natural Heritage and local authorities to publicise the Access Code, and requires Scottish Natural Heritage to promote understanding of it.

45. Subsections (8) and (9) places duties on Scottish Natural Heritage to keep the Access Code under review, to consult such persons as it thinks fit when carrying out the review, and to make such modifications as it thinks fits (subject to the same procedures as apply to its initial approval).

Section 11: Power to exempt particular land from access rights

46. Subsection (1) enables local authorities, whether on applications from third parties or on their own initiative, by order, to exempt a particular area of land from access rights for a particular purpose.

47. Subsection (2) requires a local authority, where an order would have effect for six or more days, to consult the owner of the land in question, the local access forum and any other person considered appropriate, to publicise the intended purpose and effect of the proposed order and to invite and consider objections on the proposed order.

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48. Subsection (3) requires that any order which would have effect for six or more days requires confirmation by Ministers.

49. Subsection (4) requires local authorities to send to Ministers copies of any objections received in pursuance of subsection (3) and any other representations received relating to an order requiring confirmation by Ministers.

50. Subsection (5) places a duty on the Ministers, prior to confirming any such order, to consider any objections or representations received and provides that they may hold an inquiry to enable them to decide whether to confirm the order. If an inquiry is held, subsection (6) applies the same procedures as apply to local inquiries under planning legislation.

51. Subsection (7) sets out Ministers' powers in relation to an order which requires their confirmation (and, in particular, allows them to confirm it with modifications) and subsection (8) makes provision for the date from which an order takes effect.

52. Subsection (9) requires local authorities to publicise the order as soon, as is practicable after it has been made or, as the case may be, confirmed by Ministers.

53. Subsection (10) allows local authorities to revoke, amend or re-enact any order made by them under this section.

54. Subsection (11) provides that where it is proposed that an order is revoked, amended or re-enacted, and the order would continue to have effect for six or more days, then subsections (2) to (9) will apply in these cases.

55. Subsection (12) provides that all orders made under this section will, subject to subsection (13), have a maximum duration of two years

56. Subsection (13) sets the maximum duration of orders which re-enact an order made under subsection (1).

Section 12: Bylaws in relation to land over which access rights are exercisable

57. This section confers power on local authorities to make bylaws. Paragraph 8 of schedule 2 amends the Civic Government (Scotland) Act 1982 in consequence of this new bylaw making power.

58. Subsection (1) sets out the general purposes for which bylaws can be made and subsection (2) sets out some particular examples of matters which might be addressed by bylaws.

59. Subsection (3) clarifies that any bylaws made under this section must not interfere with the exercise of any public right of way or of navigation, or with any functions of a statutory undertaker as defined in section 32.

60. Subsection (4) applies the process for the confirmation of bylaws by Ministers set out in the Local Government (Scotland) Act 1973 (c.65) to the making of bylaws under this section, subject to the modifications specified in subsection (5). Subsections (6) and (7) set out consultation requirements. Subsection (8) sets out the circumstances when those consultation requirements can be relaxed.

Section 13: Duty of local authority to uphold access rights

61. This section places a duty on local authorities to uphold the exercise of access rights, so far as doing so is consistent with their other functions, on and over any route, waterway or other means by which access rights may be exercised. A local authority may institute and defend legal proceedings and take any other steps which they think fit for the purposes of carrying out the duty.

Section 14: Prohibition signs, obstructions, dangerous impediments etc.

62. Subsection (1) prohibits an owner from doing, or from refraining from doing, certain things for the purpose, or for the main purpose, of preventing or deterring the exercise of access rights.

63. Subsection (2) allows a local authority which considers an owner to have contravened subsection (1), by written notice, to require the owner to take such remedial action as the authority may specify within such reasonable time as may be specified.

64. Where an owner fails to comply with a notice served under subsection (2), subsection (3) enables the local authority to take the remedial action specified in the notice and to recover any reasonable costs from the owner.

65. Subsection (4) provides a right of appeal against a notice served under subsection (2) by summary application to the sheriff.

66. Subsection (5) enables Rules of Court to set out the procedures regarding the giving of public notice of appeals and third party involvement in such appeals.

Section 15: Measures for safety protection, guidance and assistance

67. Subsection (1) permits local authorities to take steps to warn and protect the public against any danger on any land in respect of which access rights are exercisable, and to indicate or enclose recommended routes over, or to give directions to, such land.

68. Subsection (2) provides a similar power to that in section 14(2) in respect of remedial action to remove things which local authorities consider likely to injure persons exercising access rights. Subsection (3) applies the same procedures as set out in section 14(3)(b) to (5).

69. Subsections (4), (5) and (7) permit local authorities, with the consent of the owner of land, to take measures to facilitate the exercise of access rights on and over the land and to provide staff or life saving equipment in respect of inland waters subject to access rights.

70. Subsection (6) places a duty on local authorities exercising powers conferred on them by this section to have regard to the extent to which there are existing facilities in their areas for the purposes of assisting persons to exercise access rights and to the needs of persons with disabilities.

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

71. Subsection (1) enables local authorities to acquire land either by agreement or, with the consent of Ministers, compulsorily, where necessary or expedient to enable or facilitate the exercise of access rights.

72. Subsection (2) prevents certain land in respect of which access rights are not exercisable from being acquired under this section.

73. Subsection (3) requires the local authority to hold and manage any land acquired under this section in a way that best facilitates the exercise of access rights.

74. Subsection (4) applies to any compulsory acquisition of land the procedures set out in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42), which generally apply to the compulsory purchase of land by local authorities.

Section 17: Core paths plan

75. Subsection (1) places a duty on each a local authority to draw up, within three years of this section coming into force, a plan for a system of paths sufficient to provide reasonable public access throughout its area. Each path within such a system is to be known as a core path. Section 7(1) provides that access rights are exercisable in respect of all core paths.

76. Subsection (2) lists examples of paths or routes which may be included in the system of core paths. These include paths and routes over land in respect of which access rights would not otherwise be exercisable,

77. Subsection (3) sets out the criteria to which a local authority must have regard in drawing up their core paths plan. Subsection (4) provides that a core paths plan must take the form of, include, or refer to maps showing the core paths.

Section 18: Core paths plan: further procedure

78. Subsection (1) requires a local authority to publicise their core paths plan and any maps it refers to, and to make them available for public inspection for at least 12 weeks. In addition, the local authority must consult the local access forums, persons representative of those living and

working on the land affected by the plan, Scottish Natural Heritage and anyone else they think fit.

79. Under subsection (2), where there are no unresolved objections, the local authority is required to adopt the plan. Where an objection is not withdrawn, subsection (3) provides that the local authority must not adopt their core paths plan unless directed to do so by Ministers under subsection (7).

80. Subsection (4) prevents Ministers from directing a local authority to adopt a core paths plan unless they hold a local inquiry into whether the paths in the plan are sufficient to give the public reasonable access throughout the local authority's area. Subsection (5) provides a general power for Ministers to hold a local inquiry in any other case.

81. Subsection (6) provides that the procedures for carrying out local inquiries which are set out in the Town and Country Planning (Scotland) Act 1997 (c.8) will apply to any inquiry held under this section.

82. Subsection (7) allows Ministers, following publication of the report of the local inquiry, to direct the local authority to adopt the plan as originally drawn up or in a modified form.

83. Subsection (8) requires a local authority on adopting their core paths plan, to give public notice of its confirmation and to compile a list of core paths. The list, plan and maps to which it refers must be made available for public inspection; copies are to be made available for sale at a reasonable price, and copies are to be provided to Ministers.

84. Where Ministers decline to direct the local authority to adopt the plan, subsection (9) requires the local authority to draw up a revised plan. Provision is made to allow Ministers to specify the procedure and time limits for preparing and confirming revised plans (subsections (9) and (10)).

Section 19: Power to maintain core paths etc.

85. This section allows local authorities to do anything which they consider appropriate for the purposes of maintaining a core path, keeping a core path free from obstruction or encroachment and providing the public with directions to, or with an indication of the extent of, a core path.

Section 20: Review and amendment of core paths plan

86. Subsection (1) requires a local authority to review the adopted core path plan when they consider appropriate and when required to do so by Ministers.

87. Subsection (2) allows a local authority to amend their core path plan where they consider that a core path should be closed or diverted. Subsection (3) provides that a plan cannot be so amended unless the local authority, having had regard to the extent to which persons would, but for the amendment, be likely to exercise access rights using the core path and the effect which

the amendment of the plan would have with regard to land served by that core path, consider it expedient to make the amendment.

88. Subsection (4) provides that, where a core path is stopped up or diverted by order under section 208 the Town and Country Planning (Scotland) Act 1997 (c.8), the local authority must amend their plan accordingly.

89. Subsection (5) requires a local authority on amending their core paths plan, to give public notice of the plan as amended and to compile an amended list of core paths. The amended list, plan and maps to which it refers must be made available for public inspection; copies are to be made available for sale at a reasonable price, and copies are to be provided to Ministers.

90. Subsections (6) and (7) provide that where a local authority proposes to add a new path to the core path plan then they must draw up an amended plan. When preparing this they must apply the provisions detailed in section 17(3) and (4) of this Act and carry out the consultation procedures set out in section 18 of this Act in respect of the amended plan.

Section 21: Delineation by agreement of paths in land over which access rights are exercisable

91. This section makes provision for a local authority to enter into an agreement for the delineation and maintenance (and, if necessary, creation) of a path over land in respect of which access rights are exercisable. Such an agreement will be on the terms and conditions agreed between the local authority and the person with whom they enter into the agreement. Those terms and conditions may, amongst other things, provide for the making of payments. Section 17(2) provides that a path which is delineated in such an agreement may form part of the local authority's core paths plan.

Section 22: Compulsory powers to delineate paths in land over which access rights are exercisable

92. This section gives a local authority, where they consider it impracticable to delineate a path by agreement under section 21, to make an order (a "path order") delineating it. The local authority may make a path order only if they consider, having regard to the rights and interests of the owner of the land over which the proposed path passes and persons likely to exercise access rights on or over the land, it appropriate to do so.

93. Where a path order is made, subsection (3) places a duty on a local authority which made the order to maintain the path delineated in the order and, if necessary, to create it. Section 17(2) provides that a path delineated in a path order may form part of the local authority's core paths plan.

94. The Occupiers' Liability (Scotland) Act 1960 (c.30) makes provision as to the duty of care which an occupier or person in control of land must show to persons on the land. Subsection (4) provides that regard may be had a local authority's duties to create or maintain a core path in determining whether they are in control of the path and therefore owe the duties set out in the Act of 1960.

95. Subsection (5) allows local authorities to revoke any path order.
96. Subsection (6) provides that a path order must be in the form prescribed in regulations made by Ministers, but requires in any case that it contain a map showing the delineation of the path.
97. Subsection (7) provides that where access rights become exercisable at a time after the coming into force of this Part on or over a path on land in respect of which access rights were not previously exercisable the agreement or order made under sections 30 to 36 of the Countryside (Scotland) Act 1967 (c.86) which created the path is to be treated as a path agreement or, as the case may be, a path order.
98. Subsection (8) subjects the making of a path order to the procedures set out in schedule 1.
99. Subsection (9) amends the definition of “overriding interest” in section 28 of the Land Registration (Scotland) Act 1979 (c.30) to provide that the right of a member of the public in respect of the exercise of access rights by way of a path delineated in a path order is to be regarded as an “overriding interest” for the purposes of that Act. Section 3 of that Act provides that an interest in land which is registered in the Land Register is subject to any overriding interest in the land (whether or not the overriding interest is noted on the title sheet to the land) Section 6(4) of that Act sets out circumstances in which an overriding interest must or may be entered on the title sheet of land to which it relates.

Section 23: Ploughing etc.

100. Subsection (1) allows an owner to plough, or to carry out other land management practices, on land incorporating a core path or a right of way. However, where core paths or rights of way are disturbed this way, subsection (2) places a duty on the owner to reinstate the path or right of way within 14 days beginning on the day the path was first disturbed or within such longer period as the local authority may allow.
101. Subsection (3) provides that an owner who fails to reinstate the path within the required period is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
102. Subsection (4) provides that if an owner fails to reinstate a path within the period set, the local authority may, after giving the owner 14 days notice of their intention, take all steps necessary to reinstate the path or right of way and recover their reasonable expenses from the owner.

Section 24: Rangers

103. This section gives local authorities the power to appoint rangers in relation to any land in respect of which access rights are exercisable. Rangers functions are to provide advice and assistance on matters relating to access rights and to perform such other duties in relation to those rights as the local authority appointing them may specify.

104. Subsection (3) provides rangers with power to enter any land in respect of which access rights are exercisable to carry out their functions.

Section 25: Local access forums

105. This section provides for the establishment of at least one local access forum by each local authority.

106. This section places a duty on each local authority to establish a local access forum consisting of a reasonable balance of persons and bodies representing the interests of persons with an interest in public access on and over land and owners of land over which access rights are exercisable.

107. The functions of a forum are to provide advisory and dispute resolution services in relation to the exercise of access rights, the existence of rights of way and the drawing up and adoption of core paths plans.

108. Subsection (5) allows a local authority to appoint one or more of its own members to a forum, and subsection (6) allows a local authority to establish more than one forum for its area.

109. Subsection (7) enables a local authority to pay expenses and allowances to the members of the local access forum.

Section 26: Power of entry

110. This section confers power on persons authorised by local authorities to enter any land for a purpose connected with the exercise or proposed exercise of any of the authorising authority's functions under Part 1. Such a person may however enter land under this power only at a reasonable time and on having given reasonable notice to the owner of the land unless entry is needed in case of emergency or for the purpose of warning the public of and protecting the public from danger, taking measures to facilitate the exercise of access rights or fulfilling certain duties relating to core paths.

111. Subsection (4) permits persons authorised to enter land to take onto land any machinery, other equipment or materials required for the purpose for which they are entering the land.

Section 27: Guidance

112. Section 27 permits Ministers to give guidance to local authorities on the performance of any of their functions under Part 1. This guidance may be given generally or to a particular local authority and local authorities are required to have regard to it. Ministers are required to consult with each local authority to which they propose to give guidance and also to lay a draft of the proposed guidance before the Scottish Parliament. The guidance cannot be given until 40 days from the date of laying, and during this time the Parliament may direct that the guidance may not be given.

Section 28: Judicial determination of existence and extent of access rights and rights of way.

113. Subsection (1) allows persons to apply to the sheriff for a determination of whether access rights are exercisable over particular land, of whether persons exercising those rights are doing so responsibly or of whether the owner of land in respect of which access rights are exercisable is using, managing or conducting ownership in a responsible way.

114. Subsection (2) allows persons to apply to the sheriff for determination of whether any path or bridleway or other means of crossing land is or is not a right of way by foot, horseback, cycle or any combination of these.

115. In either case, the proceedings are those for an action of declarator initiated by summary application to the sheriff. The local authority must receive notice of an application and are entitled to be a party to the proceedings.

116. The procedures which govern such proceedings are to be supplemented by Rules of Court made in pursuance of subsection (8).

117. Subsection (9) makes clear that the remedies provided by this section do not preclude a person who may seek to use those remedies from pursuing any other judicial remedy which may be available to them in respect of rights and duties under Part 1.

Section 29: Powers to protect natural heritage and cultural heritage etc.

118. Subsection (1) confers a power to Scottish Natural Heritage to put up and maintain notices to protect the natural heritage of land in respect of which access rights are exercisable. Section 32 provides that the “natural heritage” of land includes its flora and fauna, its geological and physiological features and its natural beauty and amenity.

119. Subsection (2) confers a power on Ministers similar to that in subsection (1) for the purposes of protecting the cultural heritage of land on which access rights are exercisable. Section 32 provides that “cultural heritage” includes structures and other remains resulting from human activity, traditions, ways of life and the historic, artistic and literary associations of people, places and landscapes. Historic Scotland may perform this function on behalf of Ministers.

120. Subsection (3) provides that any notice put up under subsection (1) or (2) may warn the public about any adverse effect their presence on that land might have on the natural or cultural heritage which the notice seeks to protect.

Section 30: Existing bylaws providing for public access to land

121. This section requires that all bylaws relating to public access to land must be reviewed by the person that made them within 2 years of the coming into force of this section and, if necessary, modified to ensure consistency with the provisions of this Act.

Section 31: Application of section 15 to rights of way

122. This section provides that the provisions in sections 14 and 15 (which impose duties on local authorities and owners of land in respect of which access rights are exercisable) apply in respect of non-vehicular rights of way over land in respect of which access rights are not exercisable as they apply in relation to access rights.

Section 32: Interpretation of Part 1

123. This section defines certain terms used in Part 1.

124. Land is defined to include land covered by non-tidal waters. The definition of owner provides that, where the owner is not in natural possession of the land, the person entitled to that possession (being the owner or a tenant) is to be treated as the owner.

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.

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 is 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.

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.

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.

*These notes relate to the Land Reform (Scotland) Act 2003 (asp 2)
which received Royal Assent on 25 February 2003*

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.
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.

PART 3 THE CROFTING COMMUNITY RIGHT TO BUY

Section 68: Land which may be bought: eligible croft land

247. This section defines the land which may be bought under Part 3 (“eligible croft land”).

248. Subsection (2) defines the land and interests in land which are to be classed as eligible croft land. It does so in a way that includes all land which is subject to crofting tenure and regulation. The definition recognises that salmon fishings and mineral rights are part of the land unless their ownership has been separated from the land. It encompasses salmon fishings in inland waters within or contiguous to eligible croft land, as defined in subsection (2)(a) to (c), if these fishings are owned separately from the land. The definition also includes mineral rights on or under eligible croft land, as defined in subsection (2)(a) to (c), where such mineral rights are owned separately from the land.

249. Subsection (3) provides that land will not be eligible croft land if it is a croft occupied or worked by the owner of the croft or a member of that owner’s family.

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

250. This section places limitations on the timing of purchases of eligible croft land which consists of salmon fishing rights or mineral rights.

251. Subsection (1) provides that a crofting community body may apply to buy mineral rights or salmon fishings either when it is buying the eligible croft land under which the relevant mineral rights lie or from which the relevant salmon fishings can be exercised or during a relevant period following a successful application to purchase that eligible croft land. It also provides that a purchase during the relevant period will be possible only if the eligible croft land remains in the ownership of the crofting community body.

252. Subsection (3) defines relevant period for the purposes of subsection (1) as a period running from the date on which Ministers agreed to the right to buy application for the purchase of the land to which the mineral rights or salmon fishings relate. In the case of salmon fishings the period expires one year after the purchase of the eligible croft land is completed and in the case of mineral rights five years after that date.

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

253. This section defines eligible additional land and eligible sporting interests which may be bought through the exercise of the crofting community right to buy and sets the period during which such sporting interests may be purchased.

254. Subsection (1) provides that when a crofting community body is buying eligible croft land under Part 3 it may also buy eligible additional land.

255. Subsection (2) provides that when a crofting community body is buying or has bought eligible croft land under Part 3 it may also buy eligible sporting interests in that land.

256. Subsection (3) specifies the period during which the crofting community body may apply to purchase eligible sporting interests and provides that such interests may be acquired only if the crofting community body retains ownership of the related eligible croft land. The period is specified as running from the date on which Ministers consented to the purchase of the eligible croft land until five years after the date on which the purchase was completed. This subsection also excludes the use of this right to buy to acquire eligible sporting interests leased back to the former owner under section 83.

257. Subsection (4) defines eligible additional land as land which is contiguous to eligible croft land and owned by the same person. It also makes clear that salmon fishings and mineral rights associated with eligible additional land may not be purchased under Part 3. The subsection defines “eligible sporting interests” as being the rights of a person other than the owner of eligible croft land under any lease or other contract to shoot or fish on that land.

258. Subsection (5) excludes rights under a lease of salmon fishings from being eligible sporting interests and thus ensures that existing formal management arrangements for salmon fishings need not be disturbed by a change of ownership in the land to which the rights relate.

Section 71: Crofting community bodies

259. Subsection (1) prescribes that a crofting community body must be a company limited by guarantee and lists the requirements which must be included in its memorandum and articles of association.

260. Subsection (2) allows Ministers discretion over the minimum number of members a crofting community body must have.

261. 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.

262. Subsection (4) provides that a crofting community body cannot be recognised as such until Ministers are satisfied that its main purpose is consistent with furthering the achievement of sustainable development.

263. Subsection (5) sets out the criteria by reference to which the memorandum and articles of a crofting community body must refer to the crofting community to which it relates. It also allows Ministers to set down alternative criteria where they consider it appropriate to do so.

264. Subsection (7) states, for the avoidance of doubt, that the memorandum and articles of association of the crofting 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 72: Provisions supplementary to section 71

265. This section specifies the constraints which apply to a crofting community body after it has acquired land under the legislation, the sanction for non-compliance and the basis on which that sanction will be applied.

266. Subsection (1) prohibits any crofting community body, which has acquired land under Part 3 and continues to own that land, from amending its memorandum or articles of association except with the consent of Ministers.

267. Subsection (2) allows Ministers to acquire land from a crofting community body, by means of compulsory purchase, where the body has purchased land under Part 3 but no longer meets the criteria which would qualify it to exercise a crofting community right to buy that land.

Section 73: Application by crofting community body for consent to buy croft land

268. This section deals with the process of applying to exercise the crofting community right to buy.

269. Subsection (1) provides that only a crofting community body may exercise the right to buy, and subsection (2) further provides that the exercise of that right requires the consent of Ministers, and that such consent must be obtained by a written application.

270. Subsection (3) provides that there must be a separate right to buy application in respect of each holding of land (including holdings consisting solely of salmon fishings or mineral rights) or of sporting interests which the crofting community body is seeking to purchase and also provides that each application must be considered and determined by Ministers on its own merits. Subsection (4) provides that a holding of land or of sporting interests includes a holding in common or joint ownership.

271. Subsection (5) provides that an application must be made in the form, and contain such information as is, prescribed by regulations made by Ministers.

272. Subsection (6) specifies that at the same time as the crofting community body applies to Ministers, it must send a copy of the application form and associated material to the owner of the land or sporting interests. It also requires the crofting community body to send a copy of the application to the holder of any standard security over the land and invite that person to give notice, within 60 days, to the crofting community body and Ministers if any the creditor has taken any of the steps mentioned in subsection (7) to enforce its security in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35).

273. In the event that such notice is given subsection (6)(a)(ii) requires the creditor holding the standard security to provide views on the application to Ministers in writing within that 60 day period.

274. Subsection (8) requires Ministers, on receipt of the application, to invite views from the parties specified in the subsection within 60 days and to send a copy of that invitation to the crofting community body.

275. Subsection (9) sets out an arrangement for seeking the consent of the owner to the sale of any eligible additional land specified in an application.

276. Subsection (10) requires Ministers to give public notice of receipt of the application and to invite views on the application within 60 days of publication of the notice.

277. Subsection (11) specifies where such notice shall be published.

278. Subsection (12) requires Ministers to send copies of any views they receive to the crofting community body, inviting the crofting community body to submit any responses to those views to Ministers within 60 days.

279. Subsection (13) requires that Ministers will take all views and responses received into account when considering an application.

280. Subsection (14) provides that Ministers may decline to consider an application due to such application being incomplete, not being in the proper form, that it includes land or an interest in land which is not within the definitions contained in sections 68 and 70, or that it is an application which Ministers would be bound to reject because it is otherwise incompetent.

281. Subsection (15) sets constraints on the timing of a decision by Ministers on an application so as to ensure that there is sufficient time for references to the Land Court under sections 79 or 81 to be made and to ensure that a decision is not reached until matters referred to the Land Court have been determined by the Court.

Section 74: Criteria for consent by Ministers

282. This section provides that Ministers must satisfy themselves about specified matters before consenting to a crofting community right to buy.

283. Subsection (1)(g) prevents the crofting community right to buy being used to repurchase land which has previously been acquired through the use of that right to buy then re-sold.

284. Subsection (1)(h) prevents the exercise of the crofting community right to buy where the owner of the land is prevented from selling or is under an obligation to sell to someone other than the community body.

285. Subsection (1)(i) requires Ministers to be satisfied that a community body meets the requirements in section 71.

286. Subsection (1)(j) requires Ministers to satisfy themselves that the exercise of the right to buy would be compatible with furthering the achievement of sustainable development.

287. Subsection (1)(k) ensures that acquisitions of salmon fishings, mineral rights and sporting interests must be capable of contributing to the development of the community.

288. Subsection (1)(l) requires Ministers to ensure that the crofting community body and the crofting community to which it relates fully represent the crofting interests in the land which is the subject of the application.

289. Subsection (1)(m) requires Ministers to be satisfied that a ballot has taken place and the relevant crofting community have approved the crofting community right to buy application. This links to section 75.

290. Subsection (1)(n) requires Ministers to be satisfied that granting an application would be in the public interest before consenting to the application.

291. Subsection (2) expands the meaning of public interest for the purposes of the requirement in subsection (1)(n), and in particular provides that the interests of any community represented by a community body established for the purposes of Part 2 and any crofting community represented by a crofting community body must be taken into account.

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

292. This section sets out the arrangements for a ballot to establish that a crofting community right to buy application by a crofting community body has the support of the crofting community which that body represents.

293. Subsection (1) provides that a proposal by a crofting community body to exercise a crofting community right to buy will be deemed to have been approved by the relevant crofting community if, firstly, the vote takes place within the six month period immediately preceding the date of the right to buy application; secondly, that a majority of those voting in that ballot supported the proposal to make the application; and thirdly, that the majority of the croft tenants of the land to which the application applies who voted in that ballot also voted in favour of making the application. It also specifies that only members of the crofting community which the crofting community body represents may vote in the ballot.

294. Subsection (2) requires that the conduct of the ballot and arrangements for ascertaining and publishing the results will be prescribed by regulations made by Ministers.

295. Subsection (3) provides that if a ballot is not conducted as prescribed by regulations made by Ministers the application to which it relates will fall.

296. Subsection (4) sets out the requirements for reporting the results of the ballot to Ministers.

297. Subsection (5) defines a croft tenant for the purposes of the ballot provisions.

Section 76: Right to buy same eligible land exercisable by only one crofting community body

298. This section deals with the situation where there is more than one crofting community body interested in buying the same land (e.g. where two or more crofting townships share a common grazing).

299. Subsection (1) provides that only one crofting community body may exercise the right to buy that land.

300. Subsection (2) states that where two or more such bodies seek to buy the same land Ministers will decide which one shall be allowed to proceed.

301. Subsection (3) constrains Ministers from making that decision before the processes specified in section 73(6) to (13) are completed in relation to each application.

302. Subsection (4) provides that once Ministers have decided which crofting community right to buy shall be allowed to proceed, any other crofting community body's right to buy, so far as it relates to that application, shall be extinguished. It also specifies who must be notified of their decision.

Section 77: Reference to Land Court of purchase of eligible additional land without owners consent

303. This section deals with cases in which the crofting community body applies to include eligible additional land in the transfer and the owner of the land does not agree that such land should be included.

304. In cases where the owner of eligible additional land does not consent to it being bought under Part 3, subsection (1) requires Ministers to refer the question as to whether the application should proceed in the absence of such consent to the Scottish Land Court. In the event of such a reference subsection (2) provides who may make representations to the Court.

305. Subsection (3) provides that the Scottish Land Court may determine that the land may be bought without the owner's consent but only if it is satisfied that the criteria specified in that subsection have been met. It further provides that the effect of the Scottish Land Court so determining will be the same as if Ministers had been satisfied, for the purposes of section 74(1)(c) that the landowner had consented to the sale of this land. The specified criteria are:-

that the acquisition must be essential to the development of the crofting community and that development must be compatible with furthering sustainable development;

that the purpose for which the purchase of that land is proposed cannot be achieved by other means available to the Scottish Land Court;

that the purchase will not be seriously prejudicial to the use and management of other land held by the land owner; and

that the total amount of additional land that can be purchased can be the greater of either an area of up to 5% of the total area of all land being purchased through the application and land already held by the crofting community body, which was previously acquired through the crofting community right to buy, or an area of up to 10 hectares.

306. Subsection (4) provides that where the Scottish Land Court approves the application it may require Ministers to impose conditions which will apply to the land to be transferred to the crofting community body.

307. Subsection (5) provides that if the purpose for which the crofting community body is seeking to acquire additional land can be met by imposing conditions on all or part of that land then the Scottish Land Court may make an order which approves the application without the additional land or part of it, providing that Ministers impose these title conditions on the eligible additional land or part of it when they consent to the application. The effect of this is that the crofting community body would not gain ownership of the additional land, but if the crofting community right to buy is affected there would be conditions imposed on land retained by the landowner.

308. Subsection (6) provides that the effect of the Scottish Land Court approving the application in accordance with subsection (5) will be the same as if Ministers had been satisfied that the landowner had consented to the inclusion of this land.

309. Subsection (7) provides clarification as to the form that title conditions might take.

Section 78: Modification of section 77(3)(a) to (e)

310. This section provides that Ministers may, by order, vary or add to the range of matters specified in section 77(3) on which the Scottish Land Court must be satisfied before it determines that an application to buy eligible additional land can proceed where the owner of the land has not consented to its sale. No such order may be made by Ministers unless a draft of it has been approved by a resolution of the Scottish Parliament.

Section 79: Additional land included at request of owner

311. This section deals with the situation where, in response to a crofting community right to buy application, a landowner requests that the crofting community body should also take other land which that landowner owns in addition to the land specified in the application.

312. Subsection (1) provides that, where such a request is made timeously, Ministers may, if they consider it is in the public interest, require that the crofting community body's application be modified to include such additional land.

313. Subsection (2) provides that Ministers may refer to the Scottish Land Court any matter relating to the question of whether additional land should be included in an application, and must do so if required either by the landowner who made the request or by the crofting community body.

314. Subsection (3) specifies who may make representations to the Court in relation to any matter referred to the Court by Ministers under subsection (2).

315. Subsection (4) requires the Scottish Land Court to report its findings in fact relating to the additional land to Ministers.

316. Subsection (5) requires Ministers to take account of the findings of the Scottish Land Court in reaching their decision as to whether to consent to an application.

Section 80: Consent conditions

317. This section provides that Ministers may apply conditions to their consent to an application to exercise the crofting community right to buy.

Section 81: Reference to Land Court of questions on applications

318. Subsection (1) allows Ministers and certain other persons with an interest in land to which a crofting community body's application relates to refer any question arising in connection with the application to the Scottish Land Court before Ministers decide the application.

319. Subsection (2) provides that in considering any question referred to it under this section the Scottish Land Court may have regard to representations made by the crofting community body, the owner and anyone else who in the opinion of the Scottish Land Court appears to have an interest.

320. Subsection (3) provides that following referral the Scottish Land Court will convey its findings to Ministers and may make an order setting out conditions which Ministers must impose if they consent to the crofting community right to buy application.

321. Subsection (4) gives the Scottish Land Court power to refuse to consider any reference made under the provisions of subsection (1) that it considers to be irrelevant.

Section 82: Notification of Ministers' decision on application

322. Subsection (1) provides that Ministers will give notice in writing of their decision to consent to or refuse an application to exercise the crofting community right to buy, and identifies

the persons to whom such notice must be given. It specifies that the notice must be in the form prescribed by regulations made by Ministers, and requires Ministers to give reasons for their decision.

323. Subsection (2) provides that regulations made under subsection (1) must require that the notice includes a full description of the land or sporting interests to which the consent relates and any title conditions imposed under section 80.

324. Subsection (3) specifies that the notice must contain information about the consequences of the decision and the rights of appeal against it and state the date on which the decision is effective.

Section 83: Leaseback to owner of sporting interests

325. This section allows for any sporting rights to be leased back to the person who owned the land prior to the exercise of the right to buy, at a nominal rental for a period of at least 20 years.

326. Subsection (1) specifies that the leaseback provisions apply where the owner of the land had sole use of the sport at the date of the right to buy application, the crofting community body has proposed a leaseback of the sport in their application, the owner has, within the specified 60 day time limit, notified Ministers, in writing, that he or she wishes to lease the sporting interest in the land, there has been no copy of an agreement between the parties on the terms of a leaseback sent to Ministers and Ministers have consented to the application.

327. Subsection (2) requires that where subsection (1) applies Ministers must within 7 days ask the Scottish Land Court to determine appropriate terms and conditions for a leaseback of sport, and subsection (3) requires the Court to determine these.

328. Subsection (4) sets out the mandatory terms and conditions which must be included, and provides that these will not prevent the lease from being recorded or registered in accordance with the provisions of the Registration of Leases (Scotland) Act 1857 (c.26). It also provides that the lessee under such a lease (initially the former owner of the land) will be entitled to assign his or her interest in that lease.

329. Subsection (5) provides that the crofting community body must grant a lease immediately following completion of the transfer of the land in accordance with the terms and conditions specified by the Scottish Land Court.

330. Subsection (6) provides that if the crofting community body does not proceed as required by subsection (5) the Scottish Land Court may authorise its principal clerk to grant the lease and that will have the same effect as if the lease were granted by the crofting community body.

Section 84: Effect on other rights of Ministers' decision on right to buy

331. Subsection (1) provides that the crofting community right to buy has an effect on pre-existing rights of pre-emption, redemption or reversion or any option to purchase. It

provides that these rights shall be suspended if Ministers approve a right to buy and revived when the transfer under the crofting community right to buy has been completed. It also provides that if the transfer is not completed, either because the crofting community body decides not to proceed to buy the land or it withdraws its confirmation of its intention to proceed, then the suspension of rights is lifted and these rights are revived.

332. Subsection (2) identifies statutory rights which are suspended and revived in the same way as the rights described in subsection (1).

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

Section 85: Confirmation of intention to proceed with purchase and withdrawal

334. Subsection (1) provides that a crofting community body may exercise its right to buy only if, within 21 days of the date of notification of the assessed value of the property covered by the application, it sends notice confirming its intention to proceed to buy the land to Ministers and the owner.

335. Subsection (2) provides that by notice in writing to Ministers the crofting community body may withdraw its right to buy application or its confirmation of its intention to proceed.

336. Subsection (3) specifies the action to be taken by Ministers on receipt of such notices.

Section 86: Completion of purchase

337. This section deals with conveyancing practicalities relevant to the transfer of land following Ministers giving consent to a crofting community right to buy application.

338. Subsection (1) provides that the crofting community body will be responsible for preparing the documents necessary to effect the conveyance of the land and for ensuring that the subjects to be conveyed are the same as those specified in the consent given by Ministers. It places an obligation on the crofting community body to ensure that in preparing the documents that they take account of all conditions imposed by Ministers.

339. Subsection (2) provides that where the crofting community body cannot comply with its duty regarding the property to be conveyed due to the fact that part of the land or interests in land covered by the consent to the crofting community right to buy is not owned by the person named as owner in the application, then it shall refer this matter to Ministers.

340. Subsection (3) provides that where such a reference is made then Ministers may direct that the right to buy may be exercised as if that part of the land or interest had never been included in the application or they may direct that the right to buy is extinguished.

341. Subsection (4) requires the owner of the land or interest subject to the crofting community right to buy to make title deeds available to and transfer title to the crofting community body.

342. Subsection (5) provides that if the owner refuses or fails to make these deeds available, or if they cannot be found, the crofting community body can apply to the Scottish Land Court for an order requiring the production of these documents.

343. Subsection (6) provides that the crofting community body may apply to the Scottish Land Court to authorise its principal clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so and where the principal clerk to the Court does so the effect will be the same as if it were done by the owner.

Section 87: Completion of transfer

344. Subsection (1) provides that the consideration payable for the land or interest over which the crofting community right to buy is exercised shall be the value of that land or interest as assessed under section 85 by the valuer appointed by Ministers.

345. Subsection (2) provides that this consideration should be paid not later than 6 months after the date on which Ministers consented to the right to buy application.

346. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular it allows the land owner and the crofting community body to agree an alternative payment date and provides for deferral of payment when the valuation has not been completed or has been subject to an appeal.

347. Subsection (4) specifies that where the owner is not able to grant a good and marketable title to the crofting community body by the date for payment, then payment shall be made to and held by the Scottish Land Court pending either completion of the conveyance or notification to the Court by the crofting community body that it has decided not to complete the transaction.

348. Subsection (5) specifies that if the consideration is not paid by the crofting community body by the due date the right to buy application will be deemed to have been withdrawn by the crofting community body. This creates a liability to pay compensation under section 89.

349. Subsection (6) provides that when the crofting community body records or registers its title the land acquired shall be disburdened of any heritable security.

350. Subsection (7) provides that a security that related to the land acquired through the crofting community right to buy and to other land shall continue to apply to that other land.

351. Where land is disburdened of a heritable security on purchase by a crofting community body subsection (8) requires that the crofting community body must pay the creditors under that heritable security whatever sums are due to them.

352. Subsection (9) provides that the crofting community body may deduct any sums paid to a heritable creditor under the provisions of subsection (8) from the amount that the body is due to pay the owner for the land.

Section 88: Assessment of value of croft land etc.

353. Subsection (1) requires that Ministers, where they have consented to a crofting community right buy application, must appoint a valuer to assess the value of that land or an interest in land within 7 days of that consent except where the circumstances set out in subsection (2) arise, namely a reference to the Land Court under section 83(2) (leaseback to owner of sporting interests).

354. Subsection (2) specifies that where the Land Court has to settle the terms of a leaseback a valuer should be appointed within 7 days of the date on which the terms of the leaseback have been determined by the Court.

355. Subsection (4) makes clear that in arriving at his/her valuation the valuer is acting for neither the crofting community body nor the landowner and is to act as an expert and not as an arbiter.

356. Subsection (5) specifies that the value to be ascertained is the market value at the date Ministers consented to the application to exercise the right to buy.

357. Subsection (6) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in value of other land and interests belonging to the seller as a result of the forced sale and compensation for any disturbance to the seller resulting from the forced sale.

358. Subsection (7) specifies that in arriving at the open market value for the purposes of subsection (6)(a) account should be taken of the possibility of a potential purchaser with a special interest in the property (other than the crofting community body). It also specifies that no account shall be taken in that assessment of the fact that no time was allowed for marketing the property or of depreciation of other land or disturbance (since compensation for these latter two items will be added to the open market value by virtue of subsection (6)(b)).

359. Subsection (8) states that Ministers shall pay for the valuation under this section.

360. Subsection (9) requires the valuer to ask both the owner and the crofting community body for their views in writing on the value of land or interests and to take these representations into account in arriving at his or her valuation.

361. Subsection (10) specifies that where the crofting community body and the owner have agreed the valuation they shall notify the valuer in writing of that valuation.

362. Subsection (11) provides for discounting the valuation on account of the value of a leaseback of the sporting interest to the owner.

363. Subsections (12) and (13) require the appointed valuer to notify Ministers, the landowner and the crofting community body of his or her valuation. This must be done within 6 weeks of being appointed or within a longer period set by Ministers.

364. Subsection (14) confirms that the validity of the transfer is not affected by a failure by the valuer to comply with the time limit.

Section 89: Compensation

365. This section provides for payment of compensation to anyone who has incurred losses or expenses as a result of an application to exercise the crofting community right to buy. It provides that the compensation will be payable by the crofting community body except where Ministers have refused the application, in which case the compensation will be paid by Ministers.

366. Subsection (1) specifies the circumstances in which eligibility for compensation which can be recovered from the crofting community body will arise.

367. Subsection (2) provides that the crofting community body will not be liable to pay compensation when a crofting community right to buy application is made but is not approved by Ministers.

368. Subsection (3) specifies that in the circumstances covered by subsection (2) compensation for certain losses and expenses can be recovered from Ministers.

369. Subsection (4) provides that Ministers must make an order governing how compensation is to be claimed..

370. Subsection (5) provides that if the parties cannot agree whether compensation is payable or the amount of such compensation within the timescale specified in the order, then either party may refer the matter to the Scottish Land Court.

Section 90: Grants towards crofting community bodies' liabilities to pay compensation

371. This section provides that Ministers may, in certain limited circumstances, pay a grant to a crofting community body to assist it in meeting the compensation it has to pay in connection with its exercise of the crofting community right to buy.

372. Subsection (2) specifies the circumstances in which payment of such a grant would be permitted and subsection (3) makes it clear that Ministers are not bound to pay grant even when all the circumstances specified arise.

373. Subsection (4) provides that payment of grant may be subject to conditions including conditions relating to repayment in the event of breach.

374. Subsection (5) provides that grant may be paid only if the crofting community body applies for it and subsection (6) provides that the form of the application and the application procedure will be specified by Ministers in regulations.

375. Subsection (7) specifies that Ministers must issue their decision on a grant application in writing and, in the case of refusal, specify the reasons for the refusal.

376. Subsection (8) provides that the decision by Ministers is final.

Section 91: Appeals

377. Subsections (1) and (2) provide that the landowner, any person who is a member of the crofting community, any person who has a legally enforceable right relating to the land or interests to which an application relates and anyone invited to give views on an application to exercise the crofting community right to buy in relation to that land or those interests may appeal against the Ministers' decision to consent to the application, by means of a summary application to the Sheriff.

378. Subsection (3) specifies that the crofting community body may by summary application appeal the refusal of Minister to consent to an application. However, subsection (4) makes it clear that this right does not extend to a decision by Ministers under section 73 upon which of two or more applications to buy the same land they should consent to.

379. Subsection (5) restricts appeals under subsections (1) and (3) to those on a point of law.

380. Subsections (6), (7) and (8) indicate which sheriff has jurisdiction to hear appeals, how the sheriff must dispose of these and that the sheriff's decision is final.

381. Subsection (9) provides that where the effect of the order by the sheriff is the same as granting the application the order may be made subject to any condition which Ministers could have imposed, and subsection (10) ensures that such an order shall be consistent with any decision or findings by the Scottish Land Court either in respect of additional land or in respect of a question on an application.

Section 92: Appeals to Land Court: valuation

382. Subsection (1) provides that the owner of land or of sporting interests over which the crofting community right to buy is being exercised and the crofting community body which is exercising that right to buy may appeal to the Scottish Land Court against the valuation of that land or those interests.

383. Subsection (2) requires such an appeal to state the grounds of appeal and be lodged within 21 days of notification of the valuation.

384. Subsection (3) provides that the Scottish Land Court may reassess the value of the land or interests.

385. Subsection (4) provides that the valuer may be a witness in the appeal proceedings.

386. Subsection (5) requires the Scottish Land Court to give its decision on the appeal, in writing with reasons, within 4 weeks of hearing the appeal.

387. Subsection (7) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.

Section 93: Agreement as to matters referred or appealed

388. This provision allows the parties to a crofting community right to buy to reach an out of court settlement on any issues relating to a crofting community right to buy which are the subject of an appeal.

Section 94: Register of Crofting Community Rights to Buy

389. Subsection (1) provides that the Crofters Commission will be responsible for the creation and maintenance of a Register of Crofting Community Rights to Buy.

390. Subsection (2) specifies information and documents that must be kept in the Register and provides that these must be kept available for public inspection and in an accessible form.

391. Subsection (3) gives Ministers power to make orders which modify what may be held on the Register. Section 95(5) provides that no such order may be made unless a draft of it has been approved by a resolution of the Scottish Parliament.

392. Subsection (4) specifies who must send copies of documents and information that are to be held on the Register to the Crofters Commission and when that must be done.

393. Subsection (5) provides that the Crofters Commission must ensure free public access to the Register with provision of facilities for copying entries on payment of a charge and provision for obtaining certified copies of entries on payment of a charge.

394. Subsection (6) specifies that certified copies may be used as evidence of the original.

Section 95: Avoidance of disposal other than to crofting community body

395. This section provides that after the date on which Ministers approve a right to buy application the owner of the land or sporting interests in respect of which the right to buy has been approved may not thereafter sell it to anyone other than the crofting community body. It further provides that the prohibition on sale will end if the body decides not to exercise the right to buy or withdraws the crofting community right to buy application.

Section 96: Limitation on affect of this Part

396. This section ensures that the rights of crofters under the Crofters (Scotland) Act 1993 (c.44) are not affected by the provisions relating to the crofting community right to buy. It also provides that a crofting community body which buys croft land through the exercise of the crofting community right to buy will be a landlord for the purposes of that Act and makes it clear that a crofting community body which is created for the purpose of using the crofting community right to buy conferred by Part 3 to buy land or sporting interests is not prevented from acquiring any other property by other means.

Section 97: Scottish Land Court: jurisdiction

397. This section empowers the Scottish Land Court to conduct hearings into and determine matters of fact and law relating to the exercise of the crofting community right to buy.

398. Subsection (1) indicates that the powers of the Scottish Land Court are limited in two respects. Firstly because decisions under section 79 fall to be made by Ministers, and secondly because Section 91 gives the sheriff jurisdiction on hearing and determining appeals on points of law against decisions by Ministers to consent or refuse to consent to applications.

399. Subsection (2) provides for consequential amendment of section 1(7) of the Scottish Land Court Act 1993 (c.45). This allows the Court, if it thinks fit, and requires it, on the request of any party, to state a special case on any question of law arising in any proceedings pending before it under Part 3 for the opinion of the Inner House of the Court of Session.

400. The decision of the Scottish Land Court on the matters over which it exercises jurisdiction is final unless a referral is made to the Inner House of the Court of Session under the 1993 Act (as amended by subsection (2)).

401. Subsection (3) provides that there is no appeal to the full Scottish Land Court in the event that a matter referred to the Court under Part 3 is determined by a single member of the Court acting under delegation from the full Court.

PART 4 GENERAL AND SUPPLEMENTARY

Section 98: General and supplementary provisions

402. This section provides definitions and general information pertaining to all Parts of the Act.

403. Subsections (2) to (5) regulate the making of orders and regulations by Ministers under the Act.

404. Subsections (6) and (7) detail what constitutes the sending or making of any application, notification or other specified communication, and what constitutes the effective date of such application, notification or other specified communication.

Section 99: Amendments, repeals and savings

405. This section gives effect to schedule 2, which contains details of amendments, repeals and savings to other Acts.

Section 100: Short title, Crown application and commencement

406. Subsection (2) provides that the Act binds the Crown.

407. Subsections (3) and (4) provides that the Act (excluding this section and section 98, which are effective from the day the Bill received Royal Assent – 25 February 2003) will come into force on such day as Ministers may by order appoint, and that different days may be appointed for different purposes.

SCHEDULE 1: PATH ORDERS

408. Schedule 1 sets out the procedures that a local authority must follow when proposing to make a path order under section 22.

409. Paragraph 1 requires a local authority to give notice to the owner of the relevant land of its intention to make an order, and to provide the owner with a copy of the proposed order.

410. Paragraph 2 allows up to 28 days for objections to the proposed order to be submitted by the owner in the manner set out in the notice.

411. Paragraph 3 provides that if no objections are received or any are withdrawn, the local authority can proceed with the making of the order and it shall take effect.

412. Paragraphs 4 and 5 provide that if an objection is received and not withdrawn, then an order cannot have effect unless confirmed by Ministers. Where an objection is not withdrawn, the owner must be afforded the opportunity of being heard before a person appointed by Ministers.

413. Paragraph 6 requires Ministers, after considering the report from the appointed person, to confirm an order with or without modifications, and paragraph 7 provides that the order will have effect once it is confirmed.

414. Paragraph 8 places a duty on a local authority, as soon as an order takes effect, to give notice of this to the owner along with a copy of the order.

415. Paragraph 9 requires a local authority to obtain the consent of a statutory undertaker before making a path order over land on which the statutory undertaker has apparatus. However,

paragraph 10 requires that such consent should not be unreasonably withheld. Paragraphs 11 - 14 make provision for the operators of any telecommunications code system in connection with the making of path orders. The telecommunications code is provided for in section 10 of and schedule 2 to the Telecommunications Act 1984 (c.12), and sets out statutory guidance on the exercise of functions by the operators of a telecommunications system who have been licensed under the provisions of that Act.

SCHEDULE 2 AMENDMENT AND REPEAL OF ENACTMENTS

Trespass (Scotland) Act 1865 (c.56)

416. Paragraph 1 amends section 3 of the Trespass (Scotland) Act 1865, which makes it an offence to occupy or camp on land without the consent of the owner, to provide that this offence does not apply to someone exercising access rights created by Part 1.

Acquisition of Land (Authorisation of Procedure) (Scotland) Act 1947 (c.42)

417. Paragraph 2 amends the Acquisition of Land (Authorisation of Procedure) (Scotland) Act 1947 to provide that compulsory acquisitions by Ministers under section 35 or 72 are to be carried out in accordance with the procedures set out in that Act.

Countryside (Scotland) Act 1967 (c.86)

418. Paragraph 4(a) repeals the whole of Part II of the Countryside (Scotland) Act 1967, which relates to access to open country, which will be superseded by the creation of access rights and by the new duties and powers of local authorities as introduced by Part 1. Paragraph 65 provides that the repeal of Part II does not in any way affect any compensation claim under section 21 of that Act nor does it affect the rules governing the assessment and payment of compensation under sections 21 to 23 and 70 of that Act.

419. Paragraph 4(b) repeals sections 30 to 38 (creation, closure and diversion of public paths) of the 1967 Act, which are superseded by sections 21 and 22 of this Act. However, paragraph 7 provides a saving to enable the continued application of those powers in relation to land in respect of which access rights do not apply.

420. Paragraph 4(e) repeals section 55 of the 1967 Act which gave Ministers a default power to make bylaws and paragraph 4(d) makes an amendment to section 54 of that Act consequential on this repeal. Paragraph 4(f) removes references to the making of access orders in the provisions for the making, confirmation, coming into force and validity of orders relating to public paths set out in Schedule 3 of the 1967 Act. This is because the provisions in the 1967 Act relating to access orders are repealed by the repeal of Part II of that Act.

421. Paragraph 5 amends section 47 of the 1967 Act to the effect that references to rights of way in Part III of that Act are not to be interpreted to include references to access rights created under Part 1. This means that the duties placed on local authorities in respect of rights of way by Part III of the 1967 Act do not extend to access rights.

*These notes relate to the Land Reform (Scotland) Act 2003 (asp 2)
which received Royal Assent on 25 February 2003*

Civic Government (Scotland) Act 1982 (c.45)

422. Paragraph 8 amends the Civic Government (Scotland) Act 1982 to remove the power of local authorities to make bylaws in respect of inland water as set out in section 121 of that Act. This power is replaced by the bylaw making powers in section 12 of this Act. However, the powers in the 1982 Act to make bylaws in respect of the seashore and adjacent waters are retained.

Public Order Act 1986 (c.64)

423. Paragraph 9 inserts a new subsection (9A) in section 14A of the Public Order Act 1986. This clarifies that references in that section to the public's right of access do not include access rights.

Criminal Justice and Public Order Act 1994 (c.33)

424. Paragraph 11 inserts new subsections (4A) and (4B) in section 61 of the Criminal Justice and Public Order Act 1994. This section gives the police powers to remove two or more persons from land if they have reason to believe that these persons have become trespassers. This amendment clarifies that people who have ceased to be entitled to exercise access rights for the reasons specified in the new subsection (4A)(a) and (b), will be deemed to be trespassers and, therefore, subject to the provisions in section 61 of the 1994 Act.

425. Paragraph 12 inserts a new subsection (5A) in section 64 of the 1994 Act. This section allows the police to seize a vehicle or sound equipment in certain circumstances. These include where someone has entered land as a trespasser with a vehicle or sound equipment in contravention of a direction, and the new subsection provides that such conduct is not within the scope of access rights.

426. Paragraph 13 inserts a new subsection (1A) in section 68 of the 1994 Act that establishes the offence of aggravated trespass. The new subsection provides that someone exercising access rights in Scotland can be charged with aggravated trespass if engaging in the conduct set out in section 68(1) of the 1994 Act.

The Conservation (Natural Habitats Etc.) Regulations 1994 (S.I. 1994/2716)

427. Paragraph 15 amends regulation 3(2) of the 1994 Regulations so as to provide that Ministers and Scottish Natural Heritage, in exercising their functions under this Act, must do so in a way that complies with the requirements of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

428. Paragraph 16 inserts a new section 69A into the 1994 Regulations, the effect of which is to ensure that whenever a local authority is preparing a core path plan or is delineating, creating or maintaining a path under the relevant provisions of this Act in relation to land on which there is situated a site protected for the purpose of Community law, the authority will require to undertake a prior nature conservation impact assessment in accordance with the relevant provisions of the 1994 Regulations.

Town and Country Planning (Scotland) Act 1997(c.8)

429. Paragraph 17 provides that section 208 of the Town and Country Planning (Scotland) Act 1997 (c.8) allows planning authorities to, if necessary, authorise the stopping up or diversion of core paths to enable development to be carried out.

PARLIAMENTARY HISTORY FOR THE LAND REFORM (SCOTLAND) ACT 2003

The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports were published and the references to those Reports.

Proceedings and Reports	Reference
<i>Introduction</i>	
27 November 2001	SP Bill 44
<i>Stage 1</i>	
<i>(a) Justice 2 Committee</i>	
1 st Meeting 2002	9 January 2002, cols 809-856
2 nd Meeting 2002	14 January 2002, cols 859-910
3 rd Meeting 2002	23 January 2002, cols 912-859
4 th Meeting 2002	30 January 2002, cols 961-997
5 th Meeting 2002	6 February 2002, cols 999-1003 cols 1004-1052
2 nd Report 2002 (15 March)	SP Paper 541
Stage 1 Report on the Land Reform (Scotland) Bill	
<i>(b) Rural Development Committee</i>	
1 st Meeting 2002, Session 1	8 January 2002, cols 2686-2728
2 nd Meeting 2002, Session 1	15 January 2002, cols 2738-2780
3 rd Meeting 2002, Session 1	21 January 2002, cols 2800-2841
<i>(c) Local Government Committee</i>	
3 rd Meeting 2002, Session 1	22 January 2002, cols 2682-2728
<i>(d) Education Culture and Sport Committee</i>	
1 st Meeting 2002, Session 1	8 January 2002, cols 2917-2930
<i>(e) Consideration by the Parliament</i>	
20 March 2002	cols 10380-10434
<i>Stage 2</i>	
<i>(a) Justice 2 Committee</i>	
25 th Meeting, 2002	25 June 2002, cols 1639-1663
26 th Meeting, 2002	4 September 2002, cols 1679-1710

*These notes relate to the Land Reform (Scotland) Act 2003 (asp 2)
which received Royal Assent on 25 February 2003*

28 th Meeting, 2002	11 September 2002, cols 1712-1732
30 th Meeting 2002	18 September 2002, cols 1735-1772
31 st Meeting 2002	24 September 2002, cols 1776-1826
32 nd Meeting 2002	25 September 2002, cols 1827-1874
34 th Meeting 2002	8 October 2002, cols 1875-1926
35 th Meeting 2002	9 October 2002, cols 1941-1950
37 th Meeting 2002	29 October 2002, cols 1951-1986
38 th Meeting 2002	30 October 2002, cols 1996-2036
39 th Meeting 2002	5 November 2002, cols 2039-2098

Stage 3

Consideration by the Parliament

23 January 2003	cols 17260-17393
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Royal Assent- 25 February 2003

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