

Registers Update - Register of Community Interests in Land - Land Reform (Scotland) Act 2003

UPDATE: 13

Part 2 of the Land Reform (Scotland) Act 2003 (the Act) was scheduled to come into force on 14 June 2004. A new Register, the Register of Community Interests in Land, will also come into being at that time. This update highlights key features of the new Register, with reference to the registration of the rights of community bodies in terms of the Act. It also provides guidance on the effect of such registrations on subsequent transactions.

Information regarding Part 2 of the Agricultural Holdings (Scotland) Act 2003, which creates a distinct part of the Register for registrations relating to secure agricultural tenancies, will be issued separately.

The Register

Section 36 of the Act provides that the Keeper is to set up and keep a new register to be known as the Register of Community Interests in Land (RCIL). The Register will contain specified items of information and copy documents and is required to be available for inspection, free of charge, at all reasonable times. A community interest entered on the Register has effect for a period of 5 years from the date of Registration.

Registrations

Part 2 of the Act provides for a community right to buy rural land, as such is defined by subordinate legislation. Applications by community bodies, as defined in the Act, must be made on the appropriate statutory form, copies of which are available from and should be returned to the Scottish Executive Environment and Rural Affairs Department. Various requirements are placed upon the body intending to make the application and reference should be made to the Act and supporting secondary legislation for further information.

The Keeper will not offer advice on the acceptability of such applications, nor will he supply application forms. However, pre-registration advice will be offered in respect of applications to the Land Register affected by pending or registered interests disclosed by the RCIL.

Before he may make a pending or registered entry in the RCIL, the Keeper must be directed to do so by the Scottish Ministers. It is not for the Keeper to determine the accuracy of the information submitted to the Ministers, for example the ownership of the land in question. It will, therefore, be inappropriate to rely solely on the RCIL in relation to the ownership of the property.

It should also be noted that Forms 10, 11, 12, 13 and P16 will not include a search of the RCIL, nor disclose any information from the Register.



The effect of an entry in the Register

The existence of a registered community interest, or a pending application to the Scottish Ministers, will affect the landowner's ability to market or take any action with a view to selling the affected land. The provisions also affect heritable creditors who have a right to sell the Land.

Transfers, a term itself undefined in the Act, may be prohibited in terms of section 37(8) where Ministers are considering an application, or in terms of section 40 once the entry becomes registered. Certain transfers of land are excepted by section 40 of the Act. In cases of transfers not excepted by section 40, the effect is to make the transfer of no effect. In cases of breach, the pre-emptive right to buy becomes absolute.

The Keeper will, therefore, reject or cancel an application to the Land Register where it appears to him that it is affected by the existence of a pending or registered interest of a community body in RCIL. He may also choose to make a requisition for further evidence where the information in an application is insufficient for him to make a decision on whether it should be accepted, rejected or cancelled.

