

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.

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It should also be noted that Section 4 of the Land Registration (Scotland) Act 1979 has been amended by the Act. The Keeper is now obliged to notify the Scottish Ministers whenever he rejects an application to the Land Register on the grounds that there was insufficient evidence to confirm that it was not a prohibited transfer in terms of section 40(1) or section 37(5)(e). The Keeper must also forward a copy of the application at that time and notify them of the reason for rejection.

Section 40(4) sets out the types of transfers that are excluded from the prohibitions. These include those otherwise than for value, transfers of croft land to the croft tenant, transfers vesting the land in a trustee in sequestration or transfers in consequence of the assumption, death or resignation of a partner or trustee.

In the case of an exempt transfer, by virtue of section 43 it is a requirement that the transferor incorporates in the deed an appropriate declaration specifying which provision in section 40(4) applies. Additionally, a declaration is required that the transfer does not form part of a scheme, arrangement or series, the purpose of or effect of which is to avoid the provisions of the Act. In the case of a transfer being registerable in the Land Register, the inclusion of such a declaration does not preclude the Keeper seeking further evidence in support of the application. The existence of either a pending or registered interest in RCIL should be declared in Land Register Application Forms. Where a deed recorded in the Register of Sasines contains such a declaration, and/or was impacted by entry in the Register, the Keeper may seek further evidence in respect of that transfer, should it form the progress of titles for an application for First Registration in the Land Register.

Searching the Register

The Register is free to view and search on the Internet via the Agency's website www.ros.gov.uk/rcil and on Registers Direct. The Register can be searched in a number of ways, for example, Landowner, Community Body Name and Subjects Description. Full details and guidance of how to search the Register can be found on the RCIL website page. Copy documents pertaining to each registration can be viewed on-line, including

the application form and any associated map. Key details of each registration can be viewed on the summary page.

Customers can also access the Register free of charge via the Agency's Customer Service Centres located as follows:

Erskine House	9 George Square
68 Queen Street	Glasgow
Edinburgh	G2 1DY
EH2 4NF	



Further Information and Contact Points

Further Information on Community Right to Buy is available from:

Scottish Executive
Environment and Rural Affairs Department.
Land Reform Branch
Pentland House
47 Robb's Loan
Edinburgh, EH14 1TY
Tel: 0131 244 6003
email: CRTB@scotland.gov.uk
www.scotland.gov.uk

This is the latest in a series of updates to keep you informed on the various aspects of Registers of Scotland's services, policies and procedures. More details can be found at www.ros.gov.uk/updates, or by contacting Customer Relations on 0131 200 3944.

