

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



This Registers Update gives information on the registration aspects of the Agricultural Tenants part of the Register of Community Interests in Land (RCIL). Registers Update 13 gave information on the Community Bodies part of the Register.

UPDATE: 13.1

Part 2 of the Agricultural Holdings (Scotland) Act 2003 ('the Act') is scheduled to come into force on 15 December 2004. This allows tenants in defined types of agricultural tenancies to acquire a pre-emptive right to buy the land comprised in their leases. This is achieved by the tenant registering a Notice of Interest in the RCIL.

Introduction

The RCIL was established by the Land Reform (Scotland) Act 2003 to allow a rural Community Body to register an interest in acquiring land. The effect of a registration is to give first option to buy when the landowner next takes action to transfer the land. The Community Body right to buy is more fully described in Registers Update 13. Section 25 of the Agricultural Holdings (Scotland) Act 2003 gives a similar pre-emptive right to buy to tenants in certain tenancies governed by the Agricultural Holdings (Scotland) Act 1991.



Application for Registration

Tenants or their agents must complete a Notice of Interest and send it to the Keeper with the registration fee, which is £40 for an initial registration. The tenant has also to intimate the application to the landowner. Regulations made under the Act prescribe the form of the combined Notice of Interest and registration application form - the RCIL(AT) form.

Guidance notes are available to assist in the completion of the form and both are published on the Agency website at www.ros.gov.uk/pdfs/agholdings_guidance.pdf. Tenants and their agents should note particularly the statutory requirement for specification of the "location and boundaries" of the land. The guidance gives examples of acceptable forms of description. Often a plan at an appropriate scale will be the most clear and convenient way to demonstrate the location and boundaries.

On receipt, the Keeper will register the Notice of Interest in the Agricultural Tenants part of the RCIL and issue extracts of the registration to both the tenant and the landowner. It should be noted that the Keeper's role is to register the information supplied to him. Registration does not validate or guarantee that the details given in the Notice of Interest are correct. The Act permits the owner to challenge the registration if he or she disputes any matter contained in the extract. As with the Community Body part of the Register, it will not be appropriate to rely solely on the Agricultural Tenants part of the RCIL in relation to the ownership or extent of the property.

Effect of Registration

Registration with the Keeper confers the pre-emptive right to buy. In contrast to the rural Community Body pre-emptive right, the application process does not involve Ministerial consideration. The interest is effective for five years from the date of registration. During this time and at any time after expiry the tenant can apply to have the interest registered again, with or without modifications to information included in the original Notice of Interest. Re-registration (which is only applicable if the same lease continues) involves the tenant completing a new Notice of Interest and sending it to the Keeper. A reduced fee of £25 has been set for re-registration.

Whilst a registration is current, if the landowner proposes to transfer the land he must give notice to the tenant. The tenant is then entitled to exercise the right to buy at a price agreed between tenant and landowner or otherwise determined in terms of the Act. If the landowner takes any action with a view to transferring the land having failed first to give notice to the tenant, that action also triggers the right to buy. Section 27 of the Act provides that certain types of transfer do not give rise to a right to buy. Subject to an anti-avoidance provision, these include transfers otherwise than for value.



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Whereas a purported transfer in breach of a Community Body interest is of no effect, a transfer contrary to an agricultural tenant's interest does not affect the validity of the transfer itself. In operating the Land Register, the Keeper therefore does not need to consider whether dispositions and other transfers of agricultural subjects are affected by tenants' interests. However, agents will wish to note the terms of section 28(2) which provides that the tenant in such a case will have an immediate right to buy the land from the transferee. It should also be noted that Land Register Forms 10, 11, 12, 13 and P16 reports do not include a search of the RCIL and will not disclose any information from either part of this Register.

Accessing the Register

The Register will give details of each registered interest and will also contain copies of all documents submitted to the Keeper. The documents, including the Notice of Interest and any associated maps, can be viewed and printed online. The RCIL is free to view and search via the Agency's website www.ros.gov.uk/rcil, and can also be accessed free via a link on Registers Direct or at the Agency's Customer Service Centres.

The Register can be searched in a number of ways, for example Tenant name, Landowner name and Land, Farm or Estate name. Full details and guidance of how to search the Register can be found on the Agricultural Tenants page on the RCIL website.

Further information and Contact Points

RoS Customer Service Centres

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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.

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How to obtain the Notice of Interest

Application packs, containing a Notice of Interest and guidance notes, can be obtained from the Agency's Customer Service Centres. These documents are also available on the Agency's website at www.ros.gov.uk/pdfs/aghholdings_guidance.pdf.

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