

# COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 4: Community rights to buy land**

#### **Modifications of Part 2 of Land Reform (Scotland) Act 2003 : the community right to buy**

##### Procedure for late applications

81. [Section 42](#) of the Act amends section 39 of the 2003 Act relating to the procedure for late applications. An application is deemed to be “late” when it is received by Ministers after the owner of the land to which an application relates has taken action to transfer the land but before missives are concluded, or an option to acquire is granted, in pursuance of that action.
82. Section 42(2) of the Act rewords subsection (1) of section 39 of the 2003 Act which sets out the conditions which must be met in order for section 39 to apply.
83. Section 42(3) of the Act inserts a new paragraph (aa) into section 39(2) of the 2003 Act. The new paragraph allows Ministers to request further information from the owner of the land or a creditor in a standard security with the right to sell the land before the end of the 7-day period following the landowner or the creditor giving their views on the application under section 37(5) of the 2003 Act. The owner of the land or the creditor must provide the information within 14 days of receipt of the request. This information is requested to ensure that Ministers have the necessary evidence on which to decide whether the application is “late”.
84. Section 42(3)(b) of the Act modifies subsection (2)(b)(ii) of section 39 of the 2003 Act to extend the time in which Ministers have to make a decision on whether the interest should be registered in the case of a “late” application where further information is requested. Where Ministers request further information, this period will be 44 days instead of 30 days.
85. Section 42(4) of the Act amends subsection (3) of section 39 of the 2003 Act which sets out matters on which Ministers must be satisfied, in addition to the matters set out in section 38, before approving a “late” application. Section 42(4) of the Act removes the requirement to show “good reasons” why an application was not submitted prior to the land coming on the market and replaces it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person or such relevant steps as Ministers consider reasonable were taken by a person. Section 42(4) of the Act inserts paragraph (ab) into subsection (3) which provides that Ministers shall not consent to an application if the land was offered to the same or a ‘similar’ community body within the last 12 months, unless, in the opinion of Ministers, there are good reasons why the body did not purchase the land. Section 42(9) of the Act inserts a new subsection (6) into section 39 of the 2003 Act to define “relevant work” and “relevant steps”. Section

*These notes relate to the Community Empowerment (Scotland)  
Act 2015 (asp 6) which received Royal Assent on 24 July 2015*

42(9) of the Act also inserts subsection (7) into section 39 of the 2003 Act which defines references to “the land”, “an offer” and “similar community body” for the purposes of section 39(3)(ab).

86. Section 42(4) of the Act also inserts paragraph (aa) into section 39(3). This includes provision relating to the time within which the relevant work or steps must have been taken. It is for Ministers to determine whether the relevant work or steps were carried out sufficiently in advance of the landowner taking action with a view to selling the land or giving notice that a transfer was proposed under section 48(1). The new paragraph (aa) also provides that the relevant work or steps undertaken must be in relation to the land to which the application relates or other land being used for the same purposes as the land to which the application relates. The relevant work or steps are to have been carried out by the community body or by another person with a view to the application being made by the community body. Section 42(5) inserts subsection (3A) into section 39 which sets out that, in cases where there are good reasons that relevant work or steps have not been undertaken prior to the land being marketed for sale, and that there are good reasons to allow the late application despite the lack of relevant work or steps prior to the land being marketed for sale, Ministers may accept the application.
87. Section 42(5) of the Act also inserts a new subsection (3B) into section 39 of the 2003 Act. The new subsection (3B) allows Ministers to request further information about an application from any relevant party they deem necessary in connection with the criteria on which Ministers must be satisfied under section 39(3) of the 2003 Act. Ministers can request such information until the end of the 7-day period following receipt of the landowner’s views (or the views of a creditor in a standard security with a right to sell the land) under section 37(5) of the 2003 Act. Such additional information must be provided within 14 days of the request being made by Ministers.
88. Section 42(6) of the Act amends section 39(4)(c) of the 2003 Act which sets out the impact of an application being “late” on the community right to buy process. For the purposes of the provisions listed, the community body is deemed to have confirmed their intention to proceed with the purchase on the date on which the interest is registered. The amendment inserts a reference to the new section 60A(1) of the 2003 Act (inserted by section 57 of the Act).
89. Section 42(7) of the Act inserts a new subsection (4A) into section 39 of the 2003 Act and section 42(8) amends subsection (5) of the same. These provisions provide that where missives have been concluded in respect of the sale of land or an option conferred in respect of that land, Ministers must decline to consider the application. These amendments simplify the wording in the 2003 Act.
90. Section 42(9) of the Act provides for a new subsection (8) of section 39 of the 2003 Act which makes it clear that the land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.