An analysis of Part 2 of the Land Reform (Scotland) Act 2003 using case law relating to the community right to buy

All references are to the Land Reform (Scotland) Act 2003 (which is abbreviated to "the 2003 Act") unless otherwise stated.

Introduction

This note sets out judicial consideration of the community right to buy provisions found in Part 2 of the 2003 Act. The cases that have engaged that legislative scheme are set out chronologically (in Part A of this note). Some observations about that case law are then offered (in Part B), before some additional cases or scenarios are considered for context (in Part C).

Part 2 of the 2003 Act provides a scheme that allows properly constituted community to bodies to register a community interest in land with Registers of Scotland that will then afford that body a pre-emptive right – or a right of first refusal – over the targeted land in the event the owner decides to transfer the land on the open market. Scottish Ministers are involved in this process at various stages, such as confirming that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development, making determinations as to whether an application by a community body for registration is appropriate, and consenting to any ultimate exercise of the right to buy. Those affected by the Scottish Ministers' decisions can appeal to the sheriff under section 61 of the 2003 Act within 28 days.

In every scenario discussed in this note, being situations where the Ministerial decisions to register a community interest in land have been challenged by a land owner or (in two cases) where the Scottish Ministers' decision to refuse to register such an interest was challenged by a community body, the relevant community body has found itself without a registered interest in land at the end of the court process. This a relatively small dataset, rendering it virtually impossible to draw a scientific conclusion as to why this is the case. It is nevertheless striking, and some observations relating to this are made towards the end of this note.

Not all of the cases mentioned here have been reported in published law reports or online. In some instances, the judgments are available in the documentation held at the Register of Community Interests in Land, which is one of the registers maintained by Registers of Scotland (established by section 36 of the 2003 Act). At the time of writing, the RCIL is – somewhat unfortunately – not publicly available in terms of being directly accessible to all via the internet. I am however grateful to the staff at Registers of Scotland for providing me with online access to the RCIL. Where a case has not been reported, the RCIL reference and county is provided instead.

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Part A: Cases concerning the operation of the community right to buy

1. Holmehill Limited v The Scottish Ministers (Dunblane)

Holmehill Limited v The Scottish Ministers 2006 SLT (Sh Ct) 79 was the first reported case under the 2003 Act followed on from the Scottish Ministers' decision that Holmehill Limited's community interest in land was not suitable for registration. The body – unsuccessfully – appealed against this Ministerial decision. The appeal was refused on 27 April 2006 by Sheriff J C C McSherry.

The community body had applied for registration of a community interest in land under section 39 of the 2003 Act (as originally enacted); the "late" application procedure. This is engaged when a community body seeks to buy land in a situation where a land owner has already taken certain steps towards transferring that land.

Section 39(3) of the 2003 Act, prior to its amendment by later legislation, provided:

> "…Ministers shall not decide that a community interest is to be entered in the Register unless they are (additionally to the matters as to which they are to be satisfied [in punctual circumstances]…) satisfied—
>
> (a) that there were good reasons why the community body did not secure the receipt of an application before [steps were taken to transfer the land];
>
> (b) that the level of support within the community for such registration is significantly greater than that which Ministers would… have considered sufficient for [a punctual application]; and
>
> (c) that the factors bearing on whether it is or is not in the public interest that the community interest be registered are strongly indicative that it is."

There were two important aspects of the Ministerial decision to reject this application. First, the Scottish Ministers felt good reasons had not been demonstrated for the application being late; this feature of section 39 has since been amended, and as such any future "late" application might be treated differently.

The Scottish Ministers also felt that the factors surrounding the application were not strongly indicative of it being in the public interest but were only "finely balanced"; this feature of section 39 remains and as such is of continuing relevance.

The "significantly greater support" of the scheme requirement was not referred to in this judgment. This feature of the late application process also remains, but the *Holmehill* case offers no guidance on it.

In *Holmehill*, there was a perception that the community's plan to acquire ownership was in fact an attempt to "thwart" or perhaps subvert the planning process. Sheriff McSherry observed that:

> The practical effect of ownership, once accomplished, is to give the owner control over land use and a veto over development that the owner does not like. The community right to buy had the potential to subvert the planning process…[I]n the real world, I would think it unlikely that the planning process would be commenced or continued with, for example, in respect of an application to allow housebuilding, if the developer was aware that the land was subject to a community right to buy.

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In my 2007 Edinburgh Law Review piece (referred to below), I noted the position adopted in *Holmehill* could be "highly damaging to the effectiveness of the right to buy". *Holmehill* might suggest that, once planning permission is obtained for a development, or perhaps even before, the development is viewed as being in the public interest, and any alternatives involving a community buyout cannot realistically proceed, regardless of the relative merit of an alternative proposal. It can be noted that there are other devices in Scots property law that interact quite happily with planning law and are not seen as subverting or thwarting it, in the shape of title conditions, although it is recognised that these are private law tools that operate between neighbours so the analogy might not be the best one.

Holmehill Limited v The Scottish Ministers 2006 SLT (Sh Ct) 79 (and the unreported Fairlie case, mentioned below) are digested in M M Combe, "No place Like *Holme*: community expectations and the right to buy" (2007) 11 EdinLR 109, available at https://www.euppublishing.com/doi/epdf/10.3366/elr.2007.11.1.109.

2. Fairlie Land Acquisition Company (Reference CB00020 in the RCIL – Ayr)

Some details of the case of *The Right Honourable Patrick Boyle, The Earl of Glasgow v Fairlie Land Acquisition Company Ltd and The Scottish Ministers*, Kilmarnock Sheriff Court (ref B594/05) (unreported) can be found on the Register of Community Interests in land, in the form of an interlocutor of Sheriff McDonald at Kilmarnock ordering the deletion of the community interest on 23 January 2006. My understanding from speaking to someone close to the case is that a necessary procedural step under the 2003 Act was not complied with here and this was fatal to the registered interest.

Although the case was unreported, I visited Kilmarnock Sheriff Court to look through the papers of the case shortly after judgment was pronounced. As noted above in the context of the *Holmehill* case, planning was at issue, and the land owner had argued that "the proposal brought forward by Fairlie is intended to thwart the development of the site as was proposed by him by way of objection to the Local Plan". In the Scottish Executive's reply to these pleadings, it was noted that "the application to register a community interest by Fairlie was not made to subvert the public interest, rather to promote it. The operation of the local plan process is not a reason for the second defenders to refuse to register an interest in the RCIL pursuant to the 2003 Act." At least in terms of allowing consideration of these arguments by a sheriff, it is perhaps unfortunate that this case fell away at the stage which it did.

This case (and the *Holmehill* case, mentioned above) are digested in M M Combe, "No place Like *Holme*: community expectations and the right to buy" (2007) 11 EdinLR 109.

3. Hazle v Lord Advocate (References CB00049-66, Fife)

Hazle v Lord Advocate (Kirkcaldy Sheriff Court (ref B270/07), 16 March 2009) is another unreported case, although discussion of it is available in M M Combe, "Access to Land and to Landownership" (2010) 14(1) Edinburgh Law Review 106.

Kinghorn Community Land Association registered a number of community interest in land around Kinghorn Loch in Fife, some of which related to land owned by Jacqueline Hazle. She challenged those notices.

Several points were advanced as part of the overall challenge. Addressing two unsuccessful arguments first, the land owner failed to convince the sheriff that a plan was insufficiently detailed to

determine the boundaries of the relevant land, or that there was a lack of community support for the community body's actions.

One aspect of the challenge was that the maps accompanying the application should have contained OS grid references, as required by the Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004 (SSI 2004/231). They did not. Sheriff Macnair held that this omission was not "a mere technicality or a procedural irregularity" and so was fatal to the applications. This was in spite of the fact that the landowner knew where the land was and, more strikingly, in spite of the fact that the application form itself contained a grid reference. These regulations have since been revoked by the Community Right to Buy (Scotland) Regulations 2015 (SSI 2015/400), but the stipulation that a grid reference is to be included remains.

Another argument turned on the application of section 38(1)(b) (as originally enacted). This prevents Ministers from allowing registration unless (i) the land has a substantial connection to a significant number of members of the community or (ii) it is "sufficiently near to land with which those members of the community have a substantial connection and… its acquisition by the community is compatible with furthering the achievement of sustainable development". Ministers had accepted that the criteria in section 38(1) had been met, but in the letter setting out their reasoning on section 38(1)(b) they did not distinguish which of its tests had been applied. In the event, the community suffered because of the pro forma wording adopted at a given time by Ministers.

Finally, in respect of one of the applications by the community it was held that Ministers had acted unreasonably in the *Wednesbury* sense (i.e., made a decision no rational person could have made). This proposal had been built around, amongst other things, attracting red squirrels to an area where grey squirrels were already established. The Ministers' response had been to the effect that there was no evidence reds and greys could not integrate successfully, but this did not take account of the objections of the landowner, which included evidence that Ministers denied the existence of.

4. West Register (Property Investments) Ltd. v Lord Advocate (CB00167 – Peebles)

The case of *West Register (Property Investments) Ltd. v Lord Advocate* 11 March 2015, Selkirk Sheriff Court (unreported) related to Halmyre Steading, Halmyre Mains, Peeblesshire and is discussed in K. G. C. Reid and G. L. Gretton, *Conveyancing 2015* (Edinburgh, Avizandum, 2016), pp. 37-39.

The owner of the land "appealed" against the registration of a community interest in land by Halmyre Community Company. That registration had been approved by the Scottish Ministers.

There were several aspects to this ruling. In the first place, Sheriff Paterson discussed the nature of the "appeal" provided for by the 2003 Act. With the blessing of the parties to the case, he essentially treated the process found in section 61 as if it was a judicial review of the original decision. There was also some discussion of the nature of the appeal in the *Holmehill* case, discussed above, such that the court there adopted a narrow approach to the appeal and did not consider the merits of the application afresh.

The substance of the case relates to section 38 of the 2003 Act *as originally enacted*. This provision has since been amended by the Community Empowerment (Scotland) Act 2015, so again this commentary (and the case) should be understood and interpreted on that basis.

The previous incarnation of section 38(1)(b)(i) asked that "a significant number of the members of the community… have a substantial connection with the land". The word "substantial" played something of a role in the ruling that the Scottish Ministers' application of this provision was misplaced. Section 38(1)(b)(i) now simply asks for "a connection". That aspect of the precedent is

accordingly no longer directly applicable, although it can also be noted that Sheriff Paterson was also of the view that bare residence was not enough to even establish a connection: residence was characterised as a passive act. Bare residence did not carry with it an implication of a connection to land, in the sense of an interaction between the resident and the land. The community being spread over a large area and the land comprising disused farm buildings was also mentioned as not lending itself to a substantial connection here.

It is possible that another sheriff could find this "connection" aspect of the decision influential. The case as a whole – including the point that has been superseded by the reform of legislation – might also add some quantitative weight to the argument that judges have interpreted the legislation in a manner that is not always charitable to communities (despite the fact the overall purpose of the legislation is to afford an opportunity for the redistribution of land).

5. Coastal Regeneration Alliance Limited v Scottish Ministers (East Lothian)

In *Coastal Regeneration Alliance Limited v Scottish Ministers* [2016] SC EDIN 60, the community body (Coastal Regeneration Alliance Limited) appealed against two similar decisions of the Scottish Ministers that two community interests were not to be entered in the RCIL. These applications related to land near the site of the former Cockenzie power station, by Prestonpans. Those decisions (of 19 February 2016) pre-dated the amendment of the 2003 Act by the Community Empowerment (Scotland) Act 2015, so this commentary (and Sheriff N A Ross's ruling) should be understood and interpreted on that basis.

A separate point to note is that the community body had sought to register interests at an earlier stage, but misidentified the land owner (it seems because the Land Register had not been updated to reflect a transfer of land in 2001). This necessitated the new applications for registration that were at issue in this case. This slight delay might have, in some circumstances, forced the fresh applications to be late in terms of section 39 (with associated unfortunate implications for the community body), although evidence was led in this case to the effect that steps towards the transfer of the land had actually already been made even prior to the initial applications.

The second set of applications were rejected on the basis that the Scottish Ministers were not satisfied (in both cases) that they met the terms of (i) section 39(3)(a) (relating to "good reasons" for tardiness) and (ii) section 39(3)(c) (that factors around the application were "strongly indicative" of it being in the public interest). Point (i) is of limited continuing relevance owing to reform of section 39, whereas point (ii) remains of relevance as the wording of section 39(3)(c) remains unchanged.

In relation to the now superseded section 39(3)(a), after an analysis of the circumstances of the case and considering that the scheme of the 2003 Act was focussed on communities acting at a suitably precipitate stage prior to steps being taken towards a transfer, Sheriff Ross noted that the Scottish Ministers were justified in deciding that there were no good reasons for lateness here.

On the "strongly indicative" aspect of the public interest point that continues to apply through section 39(3)(c), Sheriff Ross again left the Scottish Ministers' decision undisturbed, being one they were entitled to reach. Sheriff Ross noted the approach of Scottish Ministers in reaching their decision, including their acknowledgement of the potential benefits of the community scheme, and their setting out that such benefits were however not sufficient to satisfy the "strongly indicative" test. It was noted that various factors counted against this community body, which were summarised as a lack of evidence to support assertions regarding whether the registration was needed, the effect of non-registration, or ultimate implementation. The community proposals were also weighed against what might happen if the current owner's plans could proceed unimpeded.

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There was some consideration of the Scottish Ministers' approach to analysing this point as set out in their decision letter, which involved considering: (i) a need for the proposals; (ii) a negative impact if registration was refused; (iii) a greater level of information than for a timeous application; and (iv) how the pursuer's proposals were to be implemented. This was criticised by the community body as introducing criteria not in the legislation, but Sheriff Ross felt this criticism was misconceived – they were simply a variety of reasons for refusing the application.

Sheriff Ross also made the following observation (at paragraph 62), which goes some way to highlight just how reticent a sheriff might be to intervene in such a decision:

> There is no requirement to investigate, or consult, or advise. The defender's decision represents the exercise of a broad discretion fettered only by the broad requirements of the common law applicable to administrative decisions by statutory bodies. In my view, those broad requirements, in the sense set out in [relevant] case law, have been met, and these decisions are accordingly not vulnerable to challenge.

6. Moorbrook Textiles Limited v Scottish Ministers (CB00237, Peebles)

The text of the case of *Moorbrook Textiles Limited v Scottish Ministers* 11 May 2022, Selkirk Sheriff Court (unreported) is available to those who have access to the RCIL.

Peebles Community Trust had registered a community interest in land at March Street Mill, Peebles ("the Site"). This was challenged by the owner, Moorbrook Textiles Limited, and they successfully appealed against the decision of the Scottish Ministers to approve Trust's application (as reported on the Trust's website: https://www.peeblescommunity.org/news-and-events/pccagendnov2020-y5gm2-ptnmt-4s49r-kp2yd-34rmp-4cyep-jsbsy-semy4-cyh4w-k3axk-hcmzh-8mcrf-fmrcx-4y272-kk7mh-ts3j5-sk9cx-djt27).

There were in fact two stages to the *Moorbrook* litigation, the first being an interlocutor of Sheriff K J McGowan with 9 September 2020. On a joint motion, after considering a joint minute for the parties (i.e. the land owner and the Scottish Ministers), Sheriff McGowan found that the Scottish Ministers erred in law by:

> (i) failing to take account of a material consideration in making its Decision, namely, the extent of the potential blighting effect that the said registration would have on the ability of the Pursuer's land to deliver housing; and (ii) failing to give proper, adequate and intelligible reasons in the Decision with respect to why they believed it to be in the public interest given, inter alia, the Site's allocation in the local development plan and its programmed position in the local housing audit that the Right to Buy should be registered.

Further to this, the sheriff sustained the land owner's (first) appeal and reduced the Scottish Ministers' (first) decision to register the Trust's interest in the Site in the RCIL. An application for registration was then considered afresh in light of this stage of proceedings. It is difficult to offer any particular comment on the first episode here, save to note that an initial decision to register when it later transpired both the land owner and the Scottish Ministers agreed that this should not have happened inevitably drew these proceedings out.

The community were then successful in obtaining a second registration. This was also challenged by the land owner, who advanced various (at times overlapping) points, including that the public interest test had been misapplied, and that the decision was irrational. As shall be discussed, these were key to the land owner's successful challenge. Another point advanced was that insufficient weight had been given to the blight the land owner would suffer. They also contended that

https://doi.org/10.17868/strath.00087147

inadequate reasoning had been provided in relation to the decision that was reached, and that Scottish Ministers relied on information that the land owner had not had a chance to comment on.

This engaged an issue not considered at the earlier sheriff court stage, namely the public interest criterion that features in section 38 of the 2003 Act. In terms of section 38(1)(e), the Scottish Ministers should not decide to enter a community interest into the RCIL unless it is in the public interest for that community interest to be registered. Public interest – and the Scottish Ministers' treatment of it – turned out to be central to Sheriff Paterson's decision.

Drawing on the Scottish Ministers' decision letter and their submissions about the case of *Pairc Crofters v Scottish Ministers* (discussed below), Sheriff Paterson gleaned that the Scottish Ministers did not consider that it was necessary to consider any public interest in the land owner's proposals for the Site. In his view, this lack of any specific attempt to compare the land owner's scheme and the community body's scheme amounted to an error of law (paragraph 22). After making a general point about rural vs urban environments and the fact that competing schemes were relatively more likely to be put forward in an urban environment (paragraph 23), Sheriff Paterson identified that there was a public interest in the land owner's proposals, and that it was "obvious that it is in the public interest that the need for housing is satisfied" (paragraph 24). He observed that the land owner's scheme "may or may not bring as much community benefit [as the community body's scheme], but it does bring a benefit, in that it has the potential to satisfy a need for housing in Peebles." He then noted (at paragraph 25) that "if there are two proposals or schemes which are in the public interest, then they require to be compared."

Sheriff Paterson fortified this point (at paragraph 26) with a hypothetical comparison between: a) an inexperienced community body who aspire to meet a local housing need but lack funding or a plan; and b) a land owner with deep pockets, fully developed proposals and poised to lodge planning permission, who would be delivering the same number of homes as the community body plans to and with an agreement to sell the site to a social landlord. To not allow a for a relative public interest comparison in such a striking situation would be surprising, and indeed Sheriff Paterson noted the public interest would favour refusal of a registration of a community interest in land were this situation to arise.

Sheriff Paterson then turned to statutory interpretation of section 38, focussing on the wording of section 38(1)(e) being about any registration being "in the public interest" rather than there simply being "an interest" in registration (paragraph 27). He also distinguished the *Pairc* case as being more clearly a situation of the private interests of a land owner being pitted against a (crofting) community (paragraph 28). Finally, he noted the decision was also irrational, such that it could only have been rational if a comparison had in fact been made when competing visions were in play (paragraph 30).

The issue of blight at the Site was also analysed (at paragraphs 32-34), but Sheriff Paterson felt this had been suitably considered by Scottish Ministers in their decision-making process without any errors of law and without being irrational (paragraph 35). An issue of procedural unfairness was also discussed. This apparent unfairness related to something which, in Sheriff Paterson's view, did not form the basis of the decision (instead dealing with a peripheral matter of overall housing need in the Scottish Borders). As such, the decision was not based on that consideration, and thus no appeal would have been allowed on that basis (paragraph 37).

End of Part A

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Part B: Observations about community right to buy case law

All of the cases discussed above have their own contexts, making it difficult to draw any wide-reaching conclusions. That necessary disclaimer notwithstanding, and as already mentioned in the Introduction to this note, an unavoidable and striking observation is that on every occasion when a community has found itself involved in litigation about the community right to buy, it has lost.

It is tricky to tease out overarching themes for this pattern given the highly contextual nature of each case. What might be noted though is that where a community body has fallen foul of the procedural provisions of relevant legislation, or indeed the Scottish Ministers have been slipshod in their decision-making processes, little in the way of leeway or sympathy has been offered from the bench. Further, when public interest has been at issue, community bodies have struggled to manifest their preferred positions as far as any sheriffs were concerned, whether in terms of challenging a Ministerial refusal or in terms of a land owner challenging a Ministerial decision that had initially allowed for registration.

It should be acknowledged that Part 2 of the 2003 Act impedes someone's usual right to dispose of an asset at a time and in a manner of their choosing. This could at least engage aspects of the European Convention on Human Rights (notably Article 1 of the First Protocol, which relates to the peaceful enjoyment of possessions). As such, it is understandable that suitable levels of scrutiny are applied to the operation of the community right to buy scheme. That being the case, the community right to buy was enacted by a Scottish Parliament that was cognisant of such human rights, especially in terms of the constraints ECHR provisions placed on its legislative competence (under the Scotland Act 1998). It seems unlikely that any community's attempts to utilise the 2003 Act's provisions merit a particularly stringent interpretation on that basis. It might even be noted that the overall purpose of the legislation is to facilitate the redistribution of land to communities, and this may even be a relevant consideration in finely balanced matters of statutory interpretation.

Those tentative observations aside, the empirical evidence of this analysis is that in all of the six cases that have worked their way through the sheriff court, the community body in question, for a variety of reasons, has concluded the process with no registered community interest in land. Whether this is in and of itself an argument for reform of Part 2 of the 2003 Act is not something that I offer any view on. It may be that further research is needed, perhaps to consider whether this pattern has resulted in any chilling effect on a community who might face the prospect of litigation and capitulates accordingly.

This note now concludes by setting out points of interest from two further reported cases concerning the 2003 Act, and some scenarios which have arisen but not resulted in litigation. One reported case considers when expenses might be payable by a community to a land owner in terms of the Part 2 scheme, and the other concerns the crofting community right to buy found in Part 3.

End of Part B

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Part C: Some tangential cases and discussion points

Knockman Community Co v McCort (included for information only).

Section 40 featured in the case of *Knockman Community Co v McCort* 2014 S.L.T. (Lands Tr) 30. This section deals with the effect of a registered interest (i.e. transfers in breach of the legislation are of no effect), which can be negated in appropriate circumstances when a declaration complying with section 43 has been incorporated in a disposition.

Here, the community body had sought a finding based on the omission of a declaration from the disposition effecting a transfer of lands (known as Boreland Forest) in which they had registered an interest to purchase in terms of the 2003 Act. They contended that the effect of the omission was that the transfer was not entitled to be regarded as an exempt transfer. After "much procedure" the community body discovered that the original disposition had been changed informally to include the required declaration. There was some discussion in the case about whether this was by a "false deed" or by certain practice at Registers of Scotland allowing for a later amendment, but in any event the transfer was accepted by the Keeper on that basis. The community body withdrew their application. The respondents in this case sought certain expenses but the Lands Tribunal decided that in the whole circumstances of this case it was not appropriate to make any such award.

Pairc Crofters Ltd v The Scottish Ministers

Pairc Crofters Ltd v The Scottish Ministers [2012] CSIH 96 related to the crofting community right to buy, under Part 3 of the 2003 Act, and associated secondary legislation in the context of the proposed buyout of crofting land in Lewis. The Inner House of the Court of Session held that these measures were in compliance with the European Convention on Human Rights (and also the devolution settlement).

Here, the crofting community body was a company limited by guarantee called the Pairc Trust. An earlier phase of this dispute related to the extent of additional eligible land which could be purchased and also the validity of an interposed lease entered into by the land owner which would, if valid, have subsisted beyond any acquisition by a crofting community body; the interposed lease was held to be valid, but remedial legislation was passed and a new section 69A was inserted into the 2003 Act to allow a crofting community body to acquire the tenant's interest in such a lease.

This case related to Pairc Trust's proposed acquisition of common grazings, which were incontrovertibly subject to the provisions of the 2003 Act. Ministerial approval was granted for the buyout, and this was challenged in Stornoway Sheriff Court. S 91 confers a role on the sheriff, but in this instance the sheriff referred two devolution-related questions to the Court of Session (under sched 6 to the Scotland Act 1998), which broadly asked whether the legislation and Scottish ministerial actions complied with ss 29 and 57 of the 1998 Act (and in turn the ECHR) respectively.

As noted, Lord President Gill (together with Lords Eassie and Malcolm) rebuffed the challenge based on the then applicable secondary legislation (concerning the ballot process and the form of application and notice), and the legislative scheme as a whole (which afforded a land owner the chance to involve the Scottish Land Court in relation to any concerns, and as such a fair hearing was suitably provided for). This is discussed more fully in Malcom Combe, "Ruaig an Fhèidh: 3", (2013) 58(2) Journal of the Law Society of Scotland 31-33 and at https://www.lawscot.org.uk/members/journal/issues/vol-58-issue-02/ruaig-an-fh%C3%A8idh-3/. See also "Ruaig an Fhèidh", (2011) 56(5) Journal of the Law Society of Scotland 54-55 for a comment on an earlier stage of this saga.

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Lochwinnoch Community Buyout Group (CB00045 – Renfrewshire)

This is not a court case and in a way is unremarkable. That being said, it is a good example of the parameters of the 2003 Act scheme, such that a group was established to acquire some land, held a ballot and the buyout was approved, but then the site was withdrawn from the market, all as discussed in an online report: BBC News, "Soft drinks site buyout goes flat" 10 September 2007 http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/6987087.stm. As noted by the Scottish Government spokesman quoted there, "The community Right to Buy legislation requires a willing seller who retains the right to withdraw from the process at any stage prior to the conclusion of the missives." This is in line with section 54(5) of the 2003 Act.

Kilmaronock (CB00210 – Dumbarton) and Marchmont and Sciennes (CB00222 – Midlothian)

As with the Lochwinnoch example, these are not court cases and again are unremarkable. They do however provide examples of the operation of sections 39(4A) and 39(5) of the Act, such that Scottish Ministers must decline to consider applications to register an interest in land when missives have been concluded or an option to acquire the land has been validly constituted between the current owner and another party prior to the community body's application.

Helensburgh Community Woodlands Group (Reference AB00002 in the Register of Applications by Community Bodies to Buy Land)

As with the above Lochwinnoch example, this was not a court case. It is however an example of the provisions in Part 3A of the 2003 Act being deployed by the Scottish Ministers in a way that did not allow a community scheme to proceed. See further Jill Robbie, "Babes in the woods: the decision of the Scottish Ministers on the application of Helensburgh Community Woodlands Group to exercise the right to buy abandoned, neglected or detrimental land" (2021) 25(3) Edinburgh Law Review 347 (doi: 10.3366/elr.2021.0716), available at https://eprints.gla.ac.uk/244345/.

End of Part C

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