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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2018 No.**

**The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018**

*Eligible land*

**Matters Ministers must have regard to when determining whether land is eligible for the purposes of Part 3A of the Act**

2.—(1) For the purposes of section 97C(4) of the Act (right to buy eligible land) matters that Ministers must have regard to are specified in paragraphs (2) and (3).

(2) In relation to section 97C(2)(a) of the Act and the question of whether land is wholly or mainly abandoned or neglected the matters are—

- (a) matters relating to the physical condition of the land that are set out in regulation 3;
- (b) matters relating to the designation or classification of the land that are set out in regulation 4; and
- (c) matters relating to the use or management of the land that are set out in regulation 5.

(3) In relation to section 97C(2)(b) of the Act and the question of whether the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community, the matters are—

- (a) matters relating to the use or management of the land that are set out in regulation 5; and
- (b) matters relating to the effect on the relevant community that are set out in regulation 6.

**Physical condition of land**

3.—(1) The matters referred to in regulation 2(2)(a) are—

- (a) the physical condition of the land and any building or other structure on the land;
- (b) the length of time that the land, building or other structure have been in that condition;
- (c) the extent, if any, to which the physical condition of the land or any building or other structure on the land—
  - (i) is a risk to public safety;
  - (ii) has, or is likely to have, a detrimental effect on adjacent land;
  - (iii) causes, or is likely to cause, environmental harm.

(2) In this regulation—

“environmental harm” has the meaning given in section 17(2) of the Regulatory Reform (Scotland) Act 2014 (meaning of expressions used in section 16 and schedule 2)(1).

## Designation or classification of land

4.—(1) The matters referred to in regulation 2(2)(b) are—

- (a) whether the land, or any part of the land, is or forms part of a nature reserve or conservation area;
- (b) whether the land, or any part of the land, is a special site;
- (c) whether any building or other structure on the land is a listed building or scheduled monument;
- (d) any policies or proposals in a local development plan or associated guidance relevant to the land or any part of the land;
- (e) any policies or proposals in a strategic development plan or associated guidance relevant to the land or any part of the land;
- (f) any policies or proposals in the National Planning Framework 3 relevant to the land or any part of the land<sup>(2)</sup>.

(2) In this regulation—

“conservation area” means an area designated as a conservation area under section 61 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (designation of conservation areas)<sup>(3)</sup>;

“listed building” has the meaning given in section 1(4) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (listing of buildings of special architectural or historic interest)<sup>(4)</sup>;

“local development plan” has the meaning given in section 15(1) of the Town and Country Planning (Scotland) Act 1997<sup>(5)</sup>;

“nature reserve” has the meaning given in section 15 of the National Parks and Access to the Countryside Act 1949 (meaning of “nature reserve”)<sup>(6)</sup>;

“scheduled monument” means a monument that is included in the schedule of listed monuments maintained by Historic Environment Scotland under section 1(1) of the Ancient Monuments and Archaeological Areas Act 1979 (schedule of monuments)<sup>(7)</sup>;

“special site” means a site designated as a special site under section 78C of the Environmental Protection Act 1990 (identification and designation of special sites)<sup>(8)</sup>; and

“strategic development plan” has the meaning given in section 7(1) of the Town and Country Planning (Scotland) Act 1997<sup>(9)</sup>.

## Use or management of land

5. The matters referred to in regulation 2(2)(c) and (3)(a) are—

- (a) how the land and any buildings and other structure on the land are currently used or managed including—

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(2) Published 23rd June 2014. ISBN. 9781784125424. The National Planning Framework 3 can be obtained from the Scottish Government website: <http://www.gov.scot/Publications/2014/06/3539>.

(3) 1997 c.9. Section 61 was amended by paragraph 13 of schedule 3 of the Historic Environment Scotland Act 2014 asp 19.

(4) 1997 c.9. Section 1(4) was amended by section 22(2)(a) and paragraph 2(d) of schedule 3 of the Historic Environment Scotland Act 2014 asp 19.

(5) 1997 c.8. Part II was substituted by section 2 of the Planning etc. (Scotland) Act 2006 asp 17.

(6) 1949 c.97. Section 15 was substituted by paragraph 12 of schedule 11 of the Natural Environment and Rural Communities Act 2006 (c.16) and amended by S.S.I. 2012/228.

(7) 1979 c.46. Section 1 was amended by paragraph 2 of schedule 2 of the Historic Environment Scotland Act 2014 asp 19.

(8) 1990 c.43. Part IIA was inserted by section 57 of the Environment Act 1995 (c.25) and amended by S.S.I. 2005/658.

(9) 1997 c.8. Part II was substituted by section 2 of the Planning etc (Scotland) Act 2006 asp 17.

- (i) the extent to which the land, buildings or other structure are used or managed for lawful public recreation or leisure activities;
- (ii) the extent to which the land is being held for the purpose of preserving or conserving the natural, historic or built environment;
- (b) whether the land or any building or other structure on the land is being used or managed for the purpose of an activity that requires a permit or licence;
- (c) the length of time that the land, buildings and structures have, as the case may be—
  - (i) been used or managed as identified under paragraphs (a) and (b); or
  - (ii) not been used or managed for any discernible purpose.

### **Harm to environmental wellbeing of a relevant community**

- 6.—(1) The matters referred to in regulation 2(3)(b) are—
- (a) whether the use or management of the land or any building or other structure on the land has resulted in or caused, directly or indirectly, a statutory nuisance;
  - (b) whether the land or any building or other structure on the land is subject to—
    - (i) a current closure notice issued under section 26 of the 2004 Act (authorisation of closure notices); or
    - (ii) a current closure order made under section 29 of the 2004 Act (closure orders);
  - (c) whether the use or management of the land or any building or other structure on the land has resulted in a warning notice being issued under section 44 of the 2004 Act (warning notices).
- (2) In this regulation—
- “2004 Act” means the Antisocial Behaviour etc. (Scotland) Act 2004<sup>(10)</sup>; and
- “statutory nuisance” means a statutory nuisance within the meaning of section 79(1) of the Environmental Protection Act 1990 (statutory nuisances and inspections therefor)<sup>(11)</sup>.

### **Occupancy or possession that constitutes tenancy**

- 7.—(1) The descriptions and classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of section 97C(5)(a) of the Act are—
- (a) occupation or possession of tied accommodation;
  - (b) occupation or possession under a licence agreement that is in the nature of a tenancy;
  - (c) occupancy or possession of residential accommodation—
    - (i) in connection with an individual’s employment or education; and
    - (ii) in a building or structure that is owned or occupied by the employer or education provider;
  - (d) temporary occupancy or possession offered, on a night-by-night basis, to individuals who are homeless persons; and
  - (e) occupancy or possession by a liferenter.
- (2) In this regulation—
- “liferenter” means an individual who, by virtue of a liferent, has the right—

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<sup>(10)</sup> 2004 asp 8. Section 26 was amended by section 99(1) of the Criminal Justice and Licensing (Scotland) Act 2010 asp 13.

<sup>(11)</sup> 1990 c.43. Section 79(1) was amended by sections 109, 110, 111, 112 of the Public Health etc. (Scotland) Act 2008 asp 5.

- (a) to receive for life the benefits of the property; and
  - (b) to live in the building or structure, or on the land, for life; and
- “tied accommodation” means accommodation provided to an individual by the individual’s employer under a service occupancy agreement (that is, in return or part return for the performance by the individual of services under the employment agreement).

**Ineligible land: land pertaining to land occupied by individual’s home**

**8.** For the purposes of section 97C(5)(b) of the Act, eligible land does not include land pertaining to land of the type mentioned in section 97C(5)(a) of the Act if that land—

- (a) forms the curtilage of the individual’s home; or
- (b) is used for one or more of the following purposes:—
  - (i) the storage of possessions owned by the occupants of the individual’s home that are used for the maintenance, upkeep or subsistence of the individual’s home or its occupants;
  - (ii) to store vehicles that are used by the occupants of the individual’s home;
  - (iii) for drainage, water supply or provision of services such as media or electricity for the individual’s home;
  - (iv) to grow food which is principally for the subsistence of the occupants of the individual’s home;
  - (v) for activities including recreation and leisure activities which are incidental to the use of the individual’s home;
  - (vi) to keep pets belonging to the occupants of the individual’s home;
  - (vii) for businesses run by occupants of the individual’s home;
  - (viii) for access to the individual’s home, if the land is owned by the same person that owns the home.

**Other ineligible land**

**9.—(1)** For the purposes of section 97C(5)(f) of the Act, eligible land does not include land of the following descriptions or classes:—

- (a) land that is held or used by a Minister of the Crown or government department (within the meaning of paragraph 3 of Part 1 of schedule 5 of the Scotland Act 1998)**(12)**; and
  - (b) land consisting of a right to petroleum, coal, gold or silver (whether or not owned separately from the land in respect of which it is exigible).
- (2)** In paragraph (1)(b)—

“coal” has the meaning given in section 65 of the Coal Industry Act 1994 (interpretation)**(13)** and, for the purposes of this regulation, references to coal include coal mines within the meaning given in that section; and

“petroleum” has the meaning given in section 1 of the Petroleum Act 1998 (meaning of “petroleum”)**(14)**.

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**(12)** 1998 c.46.

**(13)** 1994 c.21.

**(14)** 1998 c.17.