

POLICY NOTE

THE COMMUNITY RIGHT TO BUY (SCOTLAND) REGULATIONS 2015

SSI 2015/400

The above instrument was made in exercise of the powers conferred by sections 34(5), 36(2), 37(1), (2), (4)(b), (4A), and (18)(b), 39(7)(c), 41(3)(b), 48(1) and (2), 49(2), 51A (2) and (6), 51B(2)(b), (3) and (4), 52(1), (3), and (7), 63(5) and 98(3) of the Land Reform (Scotland) Act 2003 (the “2003 Act”). The instrument is subject to the negative procedure.

Policy Objectives

A number of provisions in Part 2 of the 2003 Act, were amended or added by Part 4 of the Community Empowerment (Scotland) Act 2015 (the “2015 Act”). Certain provisions of Part 4 of the 2015 Act, which relate to Part 2 of the 2003 Act, came into force on 13 November 2015 for the purposes of making regulations under Part 2 of the 2003 Act. This instrument uses both existing powers in the 2003 Act (some of which have been amended by the 2015 Act) and the new powers that were commenced for the purposes of making regulations on 13 November 2015.

The purpose of the instrument is to improve and consolidate the existing regulations relating to the process to register an interest in land, and to introduce new regulations as a result of new powers brought into force on 13 November 2015.

Regulation 1 provides that Parts 2 to 9 of this instrument only apply when the application for the right to buy land is made on or after 15th April 2015. This is to ensure that it is clear which set of regulations applies in which situation.

In regulation 2, a number of additional types of area by reference to which a community can be defined are set out in order to provide each community body with greater flexibility in defining its community in a way which best suits the particular community, rather than having to rely solely on postcode units.

Regulations 3, 5 and 12 of the instrument set out the specifications required for maps, plans and drawings with reference to Schedules 1 and 9. The specifications are broadly similar to existing requirements which are set out in the Schedule to The Community Right to Buy (Specification of Plans) (Scotland) Regulations 2004 which are revoked (subject to savings) by this instrument. These specifications are also used by Registers of Scotland when a title to land is registered in the Land Register.

Regulations 4, 6, 8, 9, 10, 14, 17, 21, set out the forms, notifications and notices which are used throughout the application process to register an interest in land and for the exercise of the right to buy itself. The layout and presentation of the new forms, notices and notifications on the layout and presentation of the current forms and notices. Also, the notices more clearly set out their purposes and effect. The re-registration form set out in Schedule 3 will make the re-registration process less onerous for community bodies to complete, as community bodies are not required to fully complete the re-registration form unless their circumstances have changed since completing their initial application form.

Regulation 7 prescribes the manner by which a public notice must be advertised in a case where the land to which a proposed application relates consists of salmon fishings or mineral rights and the owner of the land is unknown or cannot be found. It provides the community body with a range of options from which to select the most suitable form of public notice in the circumstances. This will offer the community body the greatest flexibility to use the most appropriate form of public notice depending upon the circumstances of the local community.

Regulation 11 sets out the criteria Ministers are to have regard to when deciding whether the community bodies are “similar” to a significant degree. These particular criteria will be considered by Ministers as they are key elements of the structure and purpose of the community body when a community body is formed and are considered to be the greatest indicators of similarity between community bodies.

Regulations 13, 14, 15, 16, 18, 19 and 20 prescribe the process for the conduct of the ballot. Currently, the community body is responsible for funding and carrying out the ballot. Once the relevant provisions of the 2015 Act are commenced, Ministers will be responsible for appointing a ballotter to conduct the ballot, and for meeting the cost of the ballot.

The information that the Ministers and community body must provide to the ballotter under regulations 13, 14 and Schedule 10 will ensure that the ballotter has all necessary information and evidence necessary to undertake the ballot. The information provided by the ballotter to each member of the community under regulation 15 will ensure that all members of the community who are eligible to vote understand the ballot’s purpose.

Regulation 16 sets out a process which will allow persons eligible to vote to appoint a proxy to vote in the ballot on their behalf. This is to ensure that the ballot is inclusive and reflects the views of as many members of the community as possible.

Regulation 18 sets out that the ballotter is required to retain certain information and documentation relating to the ballot for a period of 2 years after the date of the ballot, and to make that information and documentation available to Ministers or any person with a right of appeal. This requirement is in the interests of transparency and openness, and so the Ministers can be sure that they are satisfied that the approval of the community has been given.

Regulation 19 sets out the procedure for Ministers to review whether a ballot has been conducted as prescribed. It is considered appropriate for it to be Ministers that conduct the review of the ballot, as Ministers are independent of the ballot process, and Ministers undertake decision-making throughout the community right to buy process.

Regulation 20 sets out the process where a further ballot is required because Ministers consider that the initial ballot was not properly conducted. Where a further ballot must be carried out, the new ballot must be carried out as prescribed, and must be completed within condensed timescales from the initial ballot timescale in order to reduce the additional time required for completion of the right to buy process. It is desirable to keep the process of the further ballot the same as the process for the first ballot in order to avoid confusion, but the timescales are shorter in order to try and avoid delays in the right to buy process.

Regulation 22 sets out the procedure for claims for compensation, and the timescale for such a claim for compensation to be made. The procedure set out in regulation 22 is based on the current procedure set out in The Community Right to Buy (Compensation) (Scotland) Regulations 2004 which are revoked (subject to savings) by this instrument.

Regulation 23 makes savings to the existing regulations which relate to the community right to buy in Part 2 of the 2003 Act. This means that an application to register an interest in land that was made before 15th April 2016, a community interest in land which relates to an application to register a community interest in land made before 15th April 2016, and a right to buy arising under the community right to buy provisions made before 15th April 2016 will be regulated by the existing regulations, rather than this instrument. In addition, it is also necessary to ensure that savings are also made in respect of appeals that can arise out of the community right to buy process which are made before 15th April 2016.

Consultation

Two public consultations took place prior to the introduction of the Community Empowerment (Scotland) Bill, with the latter, open from November 2013 to January 2014, consulting on improvements to Part 2 of the 2003 Act which sets out the process for the community right to buy.

The results of these consultations and resultant conversations with stakeholders have shaped and informed the content of these regulations and the presentation of the forms, notices and notifications.

Impact assessments

An equality impact assessment was completed on the policy in June 2014 and equally applies to the instrument. The equality impact assessment can be accessed via the following link : <http://www.gov.scot/Resource/0047/00470252.pdf>

A Privacy Impact Assessment was not required for introduction of the Community Empowerment (Scotland) Bill, and there are no matters arising within this instrument which would require a privacy impact assessment to be carried out.

A pre-screening Strategic Environmental Assessment (SEA) was carried out prior to the Community Empowerment (Scotland) Bill, and there are no matters arising within this instrument which would require a refresh of the SEA.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) was completed on the policy in June 2014. The financial impacts of the regulations contained within this instrument have been considered in relation to the BRIA at the time it was drafted, and there are no further financial impacts identified in this instrument which were not contained within the BRIA.

Scottish Government
Agriculture, Food and Rural Communities Directorate
23 November 2015