

POLICY NOTE

THE TITLE CONDITIONS (SCOTLAND) ACT 2003 (RURAL HOUSING BODIES) AMENDMENT (NO. 2) ORDER 2017

SSI 2017/301

The power to make this Order is conferred by section 43(5) of the Title Conditions (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to the negative procedure.

Policy Objective

Section 43(5) of the 2003 Act provides that Scottish Ministers may prescribe such body as they think fit to be a rural housing body. Section 43(1) of the 2003 Act allows for the creation of a real burden over rural land which comprises a right of pre-emption in favour of a rural housing body. This is known as a rural housing burden. The imposition of such a burden means that when such land is being sold, the rural housing body has the right to purchase it, or re-purchase it, as the case may be. In essence, it enables the rural housing body to control future sales. Ministers also have the power, under section 43(8) of the 2003 Act, to determine that a body shall cease to be a rural housing body.

The right to repurchase may only be used over rural land. Rural land means land other than excluded land. Excluded land has the same meaning as in Part 2 of the Land Reform (Scotland) Act 2003, which, following amendments made by the Community Empowerment (Scotland) Act 2015, now means “land consisting of a separate tenement (i.e. interest in land) which is owned separately from the land in respect of which it is exigible”. This definition is subject to exceptions for land consisting of salmon fishings and certain mineral rights.

This Order amends the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 by adding one body, Dormont Passive Homes (Scotland) Ltd., as a prescribed rural housing body.

The power to make this Order may only be exercised where the object or function, or one of the principal objects or functions, of the body concerned is to provide housing or land for housing (section 43(6) of the 2003 Act). Dormont Passive Homes (Scotland) Ltd. complies with this requirement.

Previous amending Orders designating rural housing bodies were made in 2004, 2006, 2007, 2008, 2013, 2014 and 2017. **Annex A** provides a list of all currently prescribed rural housing bodies to date.

The Scottish Government is continuing with an exercise aimed at consolidating the list of rural housing bodies. It has attempted to contact all rural housing bodies and conservation bodies (prescribed under section 38 of the 2003 Act) and has asked them, among other things, if they wish to remain prescribed as a rural housing or conservation body. A number of responses have been received although reminders have needed to be sent to some bodies. The Scottish Government is now considering the responses received.

Consultation

A consultation is not required as applicants either meet the terms of the legislation or they do not.

Impact Assessments

An equality impact assessment has not been undertaken on the basis that this policy does not have any impact on equality issues.

Financial effects

A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. With the limited information received from the BRIA process, we conclude that the impact of this Order on existing businesses in the area is generally positive. The Order enables a further rural housing body to provide affordable housing for current and future communities. This is likely to contribute to sustaining existing businesses and may attract new businesses.

Civil Law and Legal System Division
September 2017

ANNEX A: LIST OF PRESCRIBED RURAL HOUSING BODIES

Albyn Housing Society Limited	Kilfinan Community Forest Company
Argyll Community Housing Association	Lochaber Housing Association Limited
Barra and Vatersay Housing Association Limited	Muirneag Housing Association Limited
Berneray Housing Association Limited	Mull and Iona Community Trust
Buidheann Taigheadais na Meadhanan Limited	North West Mull Community Woodland Company Limited
Buidheann Tigheadas Loch Aillse Agus An Eilein Sgitheanaich Limited	Orkney Islands Council
Cairn Housing Association Limited	Pentland Housing Association Limited
Colonsay Community Development Company	Rural Stirling Housing Association Limited
Comhairle nan Eilean Siar	Taighean Ceann a Tuath na' Hearadh Limited
Community Self-Build Scotland Limited	The Highland Housing Alliance
Craignish Community Company Limited	The Highlands Small Communities' Housing Trust
Down to Earth Solutions Community Interest Company	The Isle of Eigg Heritage Trust
Dumfries and Galloway Small Communities Housing Trust	The Isle of Gigha Heritage Trust
Dunbritton Housing Association Limited	The North Harris Trust
Ekopia Resource Exchange Limited	Tighean Innse Gall Limited
Fyne Homes Limited	West Harris Trust
Fyne Initiatives Limited	West Highland Housing Association Limited
HIFAR Limited	West Highland Rural Solutions Limited
Isle of Jura Development Trust	Yuill Community Trust C.I.C.

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