

POLICY NOTE

The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018

SSI 2018/140

The above instrument was made in exercise of the powers conferred by sections 97D(9), 97G(5)(a) and (c) and (12), 97J(2), (3), (4), (7) and (8), 97M(1) and (2) and 97U(6) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”), and section 52(10)b of the Land Reform (Scotland) Act 2016 (“the 2016 Act”) and all other powers enabling Scottish Ministers to do so. The instrument is subject to the negative procedure.

Policy Objectives

Part 3A of the 2003 Act was inserted by section 74 of the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”). Section 74 of the 2015 Act came into force on 30 June 2017 for the limited purposes of making secondary legislation under certain provisions of Part 3A of the 2003 Act.

The purpose of the instrument is to implement the community right to buy abandoned, neglected or detrimental land. The instrument is one in a suite of seven instruments implementing the new right to buy.

Regulation 1 states that the instrument will come into force on 27 June 2018 and defines the meaning of certain phrases within the instrument.

Regulation 2 specifies that any right to buy application under Part 3A must use the form in schedule 1 and include or be accompanied by the information requested in that form.

Regulation 3 specifies requirements for any maps or other drawings submitted as part of an application. This is to ensure that Scottish Ministers and Registers of Scotland are able to identify the land in the application as accurately as possible.

Regulation 4 specifies the manner in which Scottish Ministers must publish a public notice of any application that they receive. This can either be in a newspaper (digital or paper) circulating in the community area, or on a website maintained by Scottish Ministers for the purposes of making such public notices available for inspection or both.

The purpose of such a notice is to ensure that anyone with an interest in the application has the opportunity to submit their views on the application to Scottish Ministers.

Regulation 5 specifies that the form which the written notice that Scottish Ministers must give of their decision on an application must follow is specified in schedule 2.

Regulation 6 specifies that the ballot must be conducted in a fair and reasonable manner and conducted as a secret postal ballot. The community body must also identify who is eligible to vote in the ballot.

The community body must give each person eligible to vote a ballot paper along with the information specified in the regulation, which includes details as to how additional information on the community body's proposals for the land can be obtained. Each person who is eligible to vote must also be given stamped addressed envelope to return the ballot paper.

Regulation 7 specifies the process for applying for a proxy vote. A proxy vote must be accepted if it is made in accordance with the regulation. This helps ensure that the ballot is fair and open.

Regulation 8 specifies that a community body must appoint an independent observer to oversee the ballot count and recording of the result. The ballot is conducted by the community body themselves, so it is important to ensure that there is independent oversight so that the count of the votes, and the declaration of the result, is above reproach. Under Part 2 of the 2003 Act, the ballot process is conducted by an independent contractor appointed by Scottish Ministers and, as such, there is no need for an observer to be appointed.

Regulation 9 specifies the form and manner in which the community body must publish the result of the ballot. This is in a standardised form contained in schedule 3 in order to ensure consistency. The form shows the name of the community body, a description of the land to which the application relates, when the ballot was concluded, the number of eligible voters, the number who actually voted, and the numbers for and against the proposal that the community body buy the land. This information must then be published in a newspaper (digital or paper) in the community area and on a webpage or website run by or on behalf of the community body (if one exists), to ensure that all members of that community have the opportunity to find out the result. The result must be published no later than 14 days beginning with the ballot deadline.

Regulation 10 specifies that the form that a community body must use in order to inform Scottish Ministers of the ballot result is in schedule 4.

Regulation 11 specifies the information relating to the ballot that must be retained by the community body for a period of 2 years after the ballot. This is consistent with Part 2 of the 2003 Act.

The 2003 Act allows Scottish Ministers to make provision in order to enable a community body to apply for the reimbursement of costs incurred in conducting the ballot. Regulation 12 allows a community body to apply to Scottish Ministers for reimbursement of the costs of conducting a ballot.

The ballot itself must be held during the six months immediately preceding the date on which an application is made to Scottish Ministers. Any claim for costs cannot be made before the application is received, and must be made by the earlier or earliest

of the dates specified in either regulation 12(3) or (4) depending on whether the application has been successful.

If the community body is refused consent to exercise the right to buy, then the claim must be received on the earlier of:

- the day after the expiry date for an appeal against the Minister's decision (which is itself 28 days after that decision), or
- if an appeal is lodged, and the sheriff's decision upholds the Ministerial decision to refuse consent, then the day of the sheriff's decision.

If the community body is granted consent to exercise the right to buy, then the claim must be received on the earliest of:

- if the community body do not inform Scottish Ministers of their intention to proceed within the period allowed (21 days from the date that they receive the valuation), then by the end of period;
- by the date of the withdrawal notice from the community body (either before or after indicating their intention to proceed);
- the date on which the application is considered to be withdrawn as a result of failing to conclude the transfer or;
- the completion date of the transfer.

Regulation 13 specifies the information that must be included in any claim for reimbursement of ballot costs. This includes details of the community body, including contact details, the application date, ballot question and deadline and a statement of all costs incurred in conducting the ballot. Each cost claimed for must state:

- the date that the cost was incurred
- a description of the goods or services to which the cost relates
- evidence that the cost was incurred in conducting the ballot
- the date on which the goods or services were provided

Regulation 14 specifies that Scottish Ministers may request further information no later than 30 days beginning with the date on which Scottish Ministers receive an application for reimbursement and that a community body must respond to such a request no later than 7 days after the body has received the request.

Regulation 15 sets out how Scottish Ministers must calculate any reimbursement to be paid and provides further detail on the types of costs that are eligible.

The community body can also include any other information with their application that they think is relevant.

Regulation 15 details the timescale for Scottish Ministers' decision on the application for ballot costs, and what they must take into account in making that decision. Scottish Ministers have 60 days beginning with the date on which they receive the

claim for reimbursement of ballot costs to notify the community body of their decision and pay the relevant costs.

Relevant costs are those directly attributable to activities specified in regulation 6. Examples of such costs are the cost of posting, printing costs for ballot papers and stationery. Costs such as those associated with promoting the ballot are not directly attributable to the activities in regulation 6 and are therefore not eligible for a claim for reimbursement.

Costs incurred retrospectively are also not eligible for a claim for reimbursement. A cost is incurred retrospectively if the initial goods or services were provided at no cost.

Regulation 16 provides for a right of appeal against from a decision by Scottish Ministers' on the reimbursement of ballot costs. An appeal must be lodged with the Lands Tribunal within 28 days beginning on the date on which the community body received Scottish Ministers' decision. There is no right of appeal from a decision of the Tribunal, meaning that the outcome of any appeal is final.

Regulation 17 specifies the various types of area by which a community body can be defined. These are in line with those in Part 2 of the 2003 Act.

Regulation 18 details the charges for copies of the entries from the Register of Applications by Community Bodies to Buy Land, which will hold details of every application under Part 3A (and in future, Part 5 of the Land Reform (Scotland) Act 2016.

The charges are £30 for an extract of registration and colour plan and £16 for a plain copy of registration and black and white plan. The charges are subject to VAT.

It is worth noting that the register is free to view on the Registers of Scotland website, in the same way as the current Register of Community Interest in Land (which holds applications made under Part 2 of the 2003 Act). To date, no community body has requested a formal copy of any of the entries from that register.

Section 97T of the 2003 Act allows an owner, or former owner, of land who has incurred costs associated with complying with a Part 3A application the right to claim compensation. If the application is refused, that compensation claim is made to Scottish Ministers. In all other cases, it is made to the community body.

When such a claim is made to the community body, and the community body is unable to meet the claim after settlement of all liabilities in relation to the purchase, and after taking reasonable steps to obtain funds to meet the claim, the community body can apply to Scottish Ministers for a grant to meet the claim.

Regulation 19 specifies that the a claim for compensation under section 97U of the 2003 Act is to be made in the form in schedule 5 and that it should include the information of the kind specified in that schedule. A claim for compensation must be submitted to Scottish Ministers within 90 days beginning on the date on which a community body and the claimant agreed the amount payable or on the date on

which the Lands Tribunal determined a question referred to it under section 97T(5) of the 2003 Act as to the amount, if any, payable. The regulation also details the time frame within which Scottish Ministers must both acknowledge and issue a decision on such a claim.

Consultation

A public consultation took place between 21 March 2016 and 20 June 2016, seeking views on the secondary legislation relating to the Community Right to Buy Abandoned, Neglected or Detrimental Land.

A total of 51 responses were received and an analysis of the consultation responses was published in September 2016.

The majority of responses supported the proposals. Concerns were generally in relation to the practical implementation and use of the right to buy.

In addition to the public consultation, a series of face-to-face meetings with key stakeholders were held in January 2018. These were used to discuss the draft regulations and views from those meetings have been incorporated into the final draft. Stakeholders included Scottish Land & Estates, Community Land Scotland, Community Ownership Support Services, NFUS, Cairngorms National Park, and Housing Groups.

Impact Assessments

An equality impact assessment was completed on the instrument in November 2017. The equality impact assessment will be available on the Scottish Government website

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 20 December 2017 and no concerns were raised.

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.

Directorate for Environment and Forestry
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