

POLICY NOTE

THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015 (CONSEQUENTIAL MODIFICATIONS AND SAVINGS) ORDER 2016

SSI 2016/XXX

1. The above instrument is made in exercise of the powers conferred by section 143 of the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”).

Policy objectives

2. The two consequential amendments ensure that references to community bodies, are properly set out in relation to the exercise of right to buy: approval of community and consent of Ministers (section 51) and appeals (section 61) in the Land Reform (Scotland) 2003 Act (the “2003 Act”). The types of body constituting community bodies have been extended by section 37(4) of the 2015 Act, to include Scottish Charitable Incorporated Organisations (SCIOs) and Community Benefit Companies (BenComs). The amendments ensure that the new types of body which have been included as types of community bodies are subject to the same legislative provisions as existing ones (companies limited by guarantee) in the community right to buy regime. These are minor technical changes.

Commencement

3. A number of provisions in the 2015 Act came into force on the day following Royal Assent (i.e. on 24th July 2015).

4. Article 2 of the instrument makes minor amendments to sections 51 and 61 of the 2003 Act, in relation to community bodies, the types of bodies which have been extended under the 2015 Act. The changes will come into force on 15th April 2015. This is the date on which Part 4 of the 2015 Act, which modifies Parts 2 and 4 of the 2003 Act, will also come into force. These provisions concern community rights to buy land.

Powers

5. The enabling power for this instrument allows, amongst other things, Scottish Ministers to make consequential provisions and savings as they consider necessary or expedient for giving full effect to any provision of the 2015 Act.

6. The amendments in article 2(2) and (3) of the instrument are consequential on section 37(2), (3) and (4) of the 2015 Act, which lay down amendments to section 34 of the 2003 Act creating the new types of community body and making small amendments to the existing type of community body. The amendments in article 2(2) and (3) of the instrument are necessary to give full effect to section 37(2), (3) and (4) of the 2015 Act, as read with

section 51 and 61 of the 2003 Act, which are amended by section 48 and 58 of the 2015 Act respectively. Sections 51 and 61 of the 2003 Act, as amended by the 2015 Act, make reference to members of the community relating to a community body. In both cases, it is necessary for the legislation to refer to all types of community body i.e. including the new types of community body and not just those defined under section 34(1)(a) of the 2003 Act. This is necessary to give effect to section 37(2), (3) and (4) of the Act which creates these new types of community body.

7. Additionally, these consequential modifications are not to apply in relation to approvals or appeals which are related to an application to register an interest in land made prior to 15th April 2016. The savings provision at article 3 of this instrument achieves this. This is in line with the general commencement and savings of the provisions in Part 4 of the 2015 Act which modify Part 2 and 4 of the 2003 Act, and are laid down in the Community Empowerment (Scotland) Act 2015 (Commencement No.3 and Savings) Order 2015¹.

Saving provisions

8. Article 3 makes savings in line with paragraph 7 above. This is consistent with the general commencement and savings of provisions of Part 4 of the 2015 Act which modify Part 2 and 4 of the 2003 Act. In essence, the unamended 2003 Act will continue to apply to all parts of the Part 2 process if the application to register land was made before 15th April 2016. This means that the steps undertaken by a community body proceeding with its right to buy under section 51 in relation to approval of community and consent of Ministers, and any appeals made under 61(3) arising out of the community right to buy provisions will not come under the new community right to buy regime that will come into force on 15th April 2016, if their application was made before that date.

Consultation

9. A public consultation was carried out for the Community Empowerment (Scotland) Bill in 2012 and 2013. Specific provisions on the community right to buy were included in the consultation in 2013. The consultations and responses to them are available on the Scottish Government website at <http://www.gov.scot/Topics/People/engage/Bill-Consultations>. There has been no formal consultation carried out for this Order as the changes are minor technical changes.

Impacts

10. A Business Regulatory Impact Assessment and Equality Impact Assessment were carried out for the Community Empowerment (Scotland) Bill. An Equality Impact Assessment was also carried out for the Community Empowerment (Scotland) Bill and is available on the Scottish Government website at

¹ To be laid on 23 November 2015

<http://www.gov.scot/Topics/People/engage/eiapt4>. This Order has no effect on any equality issues.

Heather Holmes
Community Land Team
Land Reform and Tenancy Unit
November 2015