
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the right to buy abandoned, neglected or detrimental land under Part 3A of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) as inserted by section 74 of the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”).

Regulation 2 sets out the matters that Ministers must have regard to when establishing whether land is eligible by reason of being abandoned, neglected or detrimental under Part 3A of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) as amended by the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”). Those matters fall within four broad categories: the physical condition of the land; the designation or classification of the land; the use or management of the land and whether the condition of the land is such that it is causing harm to the environmental wellbeing of the relevant community.

Regulation 3 sets out in detail what matters Ministers must have regard to when assessing the physical condition of the land in relation to whether the land is abandoned or neglected. The matters include the physical condition of the land, the length of time that it has been in that condition, the extent to which the condition affects public safety or adjacent land and whether the condition is causing environmental harm.

Regulation 4 sets out in detail what matters Ministers must have regard to when assessing the designation or classification of the land in relation to whether the land is abandoned or neglected. The matters include whether the land is part of a nature reserve, a conservation area, includes a listed building or a special monument, is a designated special site or is subject to any policies or proposals contained in a local development plan or guidance, strategic plan or guidance or the National Planning Framework 3.

Regulation 5 sets out in detail what matters Ministers must have regard to when assessing the use or management of the land in relation to whether the land is abandoned, neglected or detrimental. The matters include whether the current use or management is for lawful purposes, whether the land is being held to preserve the natural, historic or built environment, and whether it is being held for the purposes of an activity that requires a licence.

Regulation 6 sets out in detail what matters Ministers must have regard to when assessing whether there is harm to the environmental wellbeing of the community. The matters are whether the use or management of the land is causing a statutory nuisance or is subject to a closure order or warning notice.

Under section 97C(5)(a) of the 2003 Act, land on which there is a building or structure which is an individual’s home is ineligible unless it is occupied by an individual under a tenancy. Regulation 7 sets out types of occupation or possession that are, or are to be treated as a tenancy for the purposes of section 97C(5)(a) of the 2003 Act. These are tied accommodation, occupation under a licence agreement that is in the nature of a tenancy, residential accommodation relating to employment or education, temporary accommodation provided to homeless persons or occupation or possession under a liferent.

Regulation 8 sets out land that pertains to an individual’s home which is ineligible under the right to buy abandoned, neglected or detrimental land. This includes land that forms the curtilage of the home and land used for the following purposes:- storage of possessions owned by the occupants of the home and that are used for the maintenance, upkeep or subsistence of the home or its occupants; storage of vehicles used by the occupants of the home; drainage, water supply or provision of services

such as media or electricity for the home; to grow food which is principally for the subsistence of the occupants of the home; for activities including recreation and leisure activities which are incidental to the use of the home; to keep pets belonging to the occupants of the home; for businesses run by occupants of the home; and for access to the home, if the land is owned by the same person that owns the home.

Regulation 9 sets out other ineligible land being land which is held or used by a Minister of the Crown or government department and land consisting of rights in relation to petroleum, coal, gold or silver.

Under section 97H(5)(b) of the 2003 Act, before an application is submitted under section 97C(2)(b) of the Act, a Part 3A community body must have made a request to any relevant regulator(s) to take action in relation to the land in exercise of its (or their) relevant regulatory functions if that action could, or might reasonably, be expected to remedy or mitigate the harm being caused by the detrimental land. Regulation 10 defines a “relevant regulator” as being a person, body or office holder who has a regulatory function which could address the harm (or the action which is causing the harm).

Regulation 11 sets out the period of time during which a landowner is prohibited from transferring or taking action with a view to transferring their land (“the restriction period”). The restriction period begins on the date on which a pending application made under section 97G appears on the Register of Applications by Community Bodies to Buy Land and ends on the earliest of the following:—

- on the day after the expiry of the time in which an appeal can be lodged under section 97V(6) of the 2003 Act but only where there is no appeal against a Ministerial decision to allow the application;
- where there is an appeal, the day on which the sheriff issues a decision but only if the decision is in favour of an appeal against a Ministerial decision to allow the application;
- the expiry of the period provided under section 97P(1) of the 2003 Act allowed for the Part 3A community body to inform Ministers that they wish to proceed with the purchase after being given consent to do so but only if the Part 3A community body did not notify Ministers and the owner of the land of its intention to proceed to buy the land;
- the day on which the owner of the land receives a copy of the Ministers’ acknowledgement under section 97P(3) of the Act that the Part 3A community body has withdrawn their application or confirmed to Ministers that they do not wish to proceed;
- the day on which the Part 3A community body’s application is treated as withdrawn under section 97R(5) of the Act;
- the day on which the consideration is paid by the Part 3A community body provided that, on that day, the owner is able to effect the grant of a good and marketable title to the Part 3A community body or
- the day on which, following the consignment of the consideration or estimate of what the consideration might be it to the Lands Tribunal under section 97R(4) of the Act, the owner grants a good and marketable title to the Part 3A community body or the Part 3A community body gives notice to the Tribunal of its decision not to proceed to complete the transaction.

Regulation 12 sets out what is prohibited during the restriction period set out under regulation 11. The prohibition applies to any transfer of land that forms the subject of an application under section 97G of the 2003 Act or any action taken with a view to transfer such land. Action is taken with a view to transfer land when it is advertised or otherwise exposed for sale, the owner or such a creditor or person acting on behalf the owner enters into negotiations with a view to transfer the land or such person proceeds further with a proposed transfer which was initiated prior to the date on which the interest in the land was registered.

Regulation 13 sets out exceptions to the actions prohibited under regulation 12. These include the following transfers, a transfer:—

- other than for value (e.g. a gift);
- implementing a court order;
- between spouses or civil partners after they have ceased living together (as long as the arrangement was agreed before the application was received);
- between companies in the same group;
- to a statutory undertaker for the purposes of carrying out that undertaking;
- as part of a compulsory purchase;
- as a result of a Part 2, 3 or 3A of this Act;
- implementing missives (only if the missives were signed prior to the application being made);
- implementing an option agreement (only if that agreement was created prior to the application being received);
- as part of a sequestration or bankruptcy; and
- as the result of the death of either a partner of a firm or the trustee of a trust.

Where a transfer that is otherwise than for value, between companies or on the assumption or resignation or death of one or more partners in a firm or of the trustees in a trust is part of a scheme of transfer or is one of a series of transactions, the main purpose or effect of which is to avoid regulation 12, it is not excluded under regulation 13 and therefore remains prohibited.

Regulation 14 requires that where an owner is transferring their land during the prohibition period they must include in the deed giving effect to the transfer a declaration stating which exception set out in regulation 13 they are relying on and, where a transfer that is otherwise than for value, between companies or on the assumption or resignation or death of one or more partners in a firm or of the trustees in a trust that the transfer does not form part of a scheme of transfer or a series of transactions such that it remains prohibited.

Regulation 15 provides that any right of pre-emption, redemption or reversion and any rights or interest in land conferred under Part 2 of the 2003 Act are suspended from the date on which a pending application made under section 97G of the 2003 Act appears in the Register of Applications by Community Bodies to Buy Land and ends on the earliest of the dates specified in regulation 11 (the restriction period).