

POLICY NOTE

The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018

SSI 2018/xxx

The above instrument was made in exercise of the powers conferred by sections 97C(4), (5)(b) and (f), (6)(b), 97H(6), 97N(1) and (3) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) and all other powers enabling Ministers to do so. The instrument is subject to the affirmative procedure.

Policy Objectives

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

The purpose of the instrument is to implement the new right to buy. The instrument is one of seven instruments implementing Part 3A.

Regulation 1 specifies that the instrument comes into force on 21st June 2018 and defines the meaning of certain terms used within the regulations to ensure clarity when in operation.

Regulation 2 specifies broad matters that Ministers must have regard to when determining whether land is eligible for the purposes of Part 3A of the 2003 Act. The matters are detailed in regulations 3 to 6 of this instrument. Regulation 2 specifies which of regulations 3 to 6 are relevant to applications for land that a community body asserts is abandoned or neglected and which are relevant to applications for land that a community body asserts is causing harm to the environmental wellbeing of the community.

Regulation 3 specifies matters relating to the physical condition of the land which are relevant to applications where the community body assert that the land is abandoned or neglected. These matters are the physical condition of the land and any buildings or structures on the land, how long the land or any buildings or other structures on the land have been in that condition, and what affect that condition is having on adjacent land, the environment or public safety.

Regulation 4 specifies matters relating to designations or classifications of land. This includes whether the land is or forms part of a nature reserve, conservation area or special site, whether any building or structure on the land is a listed building or scheduled monument and whether the site is part of a local or strategic development plan or whether any policies or proposals in the National Planning Framework 3 are relevant to the land or any part of it. These classifications or designations could restrict what can be done with the land, which may have an effect on its condition.

Regulation 5 specifies matters relating to the use or management of the land. These matters may have an effect on the condition of the land. The matters are the extent to which the land, buildings or other structures on the land are used or managed for lawful public recreation or leisure activities, the extent to which the land is being held for the purpose of preserving or conserving the natural, historic or built environment and whether the land or any building or other structure on the land is being used or managed for the purpose of an activity that requires a permit or a license. It refers to the length of time that the land has been used in such a way or, as the case may be, not used for any discernible purpose.

Regulation 6 specifies matters relating to harm to the environmental wellbeing of the community. The matters are whether the use or management of the land or any building or structure on the land has resulted in or caused, directly or indirectly, a statutory nuisance (section 79(1) of the Environmental Protection Act 1990), is subject to a current closure notice, a current closure order (sections 26 and 29 of the Antisocial Behaviour etc. (Scotland) Act 2004) or has resulted in a warning notice (section 44 of the 2004 Act). These all indicate that there is some sort of harm that has been identified through another mechanism.

Regulation 7 specifies types of occupancy or possession that are, or are to be treated as, a tenancy for the purposes of section 97C(5) of the Act. Section 97C of the 2003 Act excludes from Part 3A any land on which there is a building that is an individual's home, other than those occupied by a tenancy. The land to which such occupancy or possession relates is therefore eligible for the purposes of Part 3A.

The reason for this is that tenant's rights are protected through other means, depending on the type of tenancy, and that a change of owner would not change those rights. In addition, as part of the process the tenant is actively given the opportunity to submit their views on the application to Scottish Ministers.

Regulation 8 specifies types of land that pertain to land occupied by an individual's home and which are therefore ineligible. The types of land are land which is connected with the occupation and use of the home, but not necessarily physically connected. This might include, for example, a separate storage building, a home office, or kennels.

Regulation 9 specifies other land which is ineligible under Part 3A which is land that is held or used by a Minister of the Crown or Government department which is in keeping with Part 2 of the 2003 Act and land consisting of a right to petroleum, coal, gold or silver.

Regulations 10 defines what Ministers mean by the term "regulator" for the purposes of Section 97H(5) of the 2003 Act. If a community group's application is based on harm being committed, the group must have tried to have that harm addressed by someone who has a regulatory function to deal with that harm. This, and other requirements in relation to having already tried and failed to purchase the land mean that a compulsory purchase through Part 3A cannot be a community's first step in trying to deal with the harm asserted in their application.

Regulations 11 to 14 define restriction periods in relation to land under Section 97G of the 2003 Act while the application is pending, as well as what actions are restricted during that period. These regulations also set out exceptions to the restriction.

Regulation 11 details the restriction period itself. Once an application shows as pending on the Register of Applications by Community Bodies to Buy Land, a prohibition is placed on transferring the land, this includes any action taken with a view to transfer the land. We would expect that any party interested in buying land which is subject to a prohibition will become aware of the prohibition once it has been registered.

If the application is rejected, the prohibition period ends when the period for any right of appeal on that decision has also expired, or, in the case where an appeal has been lodged, the sheriff upholds the original decision to reject.

If the application is approved, it will end on the earliest of the following dates:

- When the community body withdraw their application, or at the end of the period allowed for a community body to inform Ministers of their intention to proceed, do not do so.
- If the community body fails to conclude the purchase within the relevant timetable, or fail to make full payment by the end of that timescale. It will end on the day on which the application is to be treated as withdrawn under those circumstances.
- When the transfer of the land is completed.

Regulation 12 details the types of dealings that are restricted during this period. The prohibition applies to any transfer of the land which forms the subject of the application and any action taken with a view to transfer that land. The prohibition applies to the owner, any creditor or any third party who would be authorised to transfer the land on behalf of an owner or creditor.

Regulation 13 details the exemptions to regulation 12. These are any transfers otherwise than for value, legal obligations to transfer (for example, as part of a separation agreement or as a result of another legal process such as bankruptcy).

Regulation 14 requires that a transferor must include a declaration stating which exemption has been applied in any deed giving effect to an exempt transfer..

Regulation 15 states that other rights of pre-emption, reversion and redemption and any right or interest conferred under Part 2 of the 2003 Act is suspended for the same period as the prohibition on transfers.

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 were in support of the legislation, with any concerns being with the practical implementation and use of the right to buy.

In addition, during January 2018, a series of face to face meetings with key stakeholders were held, to discuss the draft regulations and take comments that could be 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.

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
May 2018