

POLICY NOTE

The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018

SSI 2018/137

The above instrument was made in exercise of the powers conferred by section 97T(4) 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 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 purposes of making secondary legislation under Part 3A of the 2003 Act.

The purpose of the instrument is to implement the community right to buy abandoned, neglected or detrimental land by providing the procedure under which claims for compensation under section 97T of the 2003 Act can be made. The instrument is one 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.

Under section 97T(1) of the 2003 Act, any person, including an owner or former owner of land, who has incurred loss or expense in complying with the requirements of Part 3A following the making of an application by a community body; as a result of the withdrawal of a community body’s confirmation under section 97P of the 2003 Act or its failure otherwise to complete the purchase having previously confirmed its intention to do so or; as a result of the failure of the community body to complete the purchase is entitled to claim for compensation..

Regulation 2(1) specifies that a claim for compensation should be submitted to the community body which is liable to pay the compensation at the registered office of that body.

Regulation 2(2) specifies that a claim should be submitted to Ministers if the claim is for compensation under section 97T(3) of the 2003 Act. Section 97T(3) specifies that if expenses have been incurred as a result of complying with the requirements of Part 3A of the 2003 Act (section 97T(1)(a) of the 2003 Act), and the application has been refused, the owner of the land is entitled to compensation from Ministers.

Regulation 2(3) specifies that a claim for compensation is made under section 97T(1)(a), (b) or (c) of the Act must be made within the period of 90 days beginning;

- on the final settlement date (where the application was successful and the purchase concluded);

- on the date of withdrawal of the application by the community body (where the community group withdraws its application); or
- on the date on which the payment was due to be made (where the community group fail to complete the purchase).

Regulation 2(4) specifies that a claim under section 97T(3) of the 2003 Act must be made within 90 days beginning with the date of notification under section 97M(1)(b) or (c) of the 2003 Act of the refusal by Ministers to grant the community body's application.

In all cases, regulation 2(5) requires that any claim for compensation must be fully vouched (substantiated and evidenced) and specify under which section of the 2003 Act the claim is to be made.

Section 97T(5) of the 2003 Act provides that where at the expiry of such time period as may be fixed the question as to whether compensation is payable or the amount of compensation payable has not been settled between the parties, either party may refer the question to the Lands Tribunal. Regulation 2(6) provides that the period of time referred to in section 97T(5) of the 2003 Act is 60 days.

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. 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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