

## POLICY NOTE

### THE TITLE CONDITIONS (SCOTLAND) ACT 2003 (CONSERVATION BODIES AND RURAL HOUSING BODIES) (MISCELLANEOUS AMENDMENT) ORDER 2023

SSI 2023/278

The above instrument was made in exercise of the powers conferred by sections 38(4) and 43(5) of the Title Conditions (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to negative procedure.

#### Summary Box

*Insert one or two sentences to explain what the purpose of the instrument is.*

To prescribe a body as a Conservation Body and to prescribe three bodies as Rural Housing Bodies.
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#### Policy Objectives

*Conservation bodies*

Section 38(4) of the 2003 Act grants Scottish Ministers the power to prescribe certain bodies to be conservation bodies. Bodies which are so prescribed may have conservation burdens created in their favour. Conservation burdens are conditions in the title deeds of property that ensure the preservation or protection of architectural, historical or other special characteristics of land for the benefit of the public. A conservation body is entitled to enforce conservation burdens created in its favour.

This Order makes an amendment to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 by adding The Lifescape Project Limited to the list of prescribed conservation bodies. The power to make this Order may only be exercised where the object or function, or one of the principal objects or functions, of the body concerned preserve or protect, for the benefit of the public, the architectural, historical or other special characteristics of any land (in accordance with section 38(5)). The Lifescape Project Limited complies with this requirement.

The Lifescape Project Limited application is seeking designation as a conservation body. They are seeking conservation body designation in order for them to create conservation burdens with the aim to preserve or protect biodiversity, or the ecological gains undertaken to areas of land for future generations. Their plan is to engage and work with other landowners to do so where they can across Scotland.

This Order amends the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (S.S.I. 2003/453) by adding The Lifescape Project Limited, to the schedule of prescribed conservation bodies.

Previous amending Orders designating conservation bodies were laid in 2003, 2004, 2006,

2007, 2008, 2012, 2013, 2015 and 2016. **Annex A** provides a list of all currently prescribed conservation bodies to date.

#### *Rural housing bodies*

Section 43(5) of the 2003 Act provides that Scottish Ministers may prescribe such body as they think fit to be a rural housing body. Section 43(6) of the Act provides that the power conferred by subsection (5) may be exercised in relation to a body only if the object, or function, of the body (or, as the case may be one of its principal objects or functions) is to provide housing or land for housing.

Section 43(1) of the 2003 Act allows for the creation of a real burden over rural land which comprises a right of pre-emption in favour of a rural housing body. This is known as a rural housing burden. The imposition of such a burden means that when such land is being sold, the rural housing body has the right to purchase it, or re-purchase it, as the case may be. In essence, it enables the rural housing body to control future sales. Ministers also have the power, under section 43(8) of the 2003 Act, to determine that a body shall cease to be a rural housing body.

The right to repurchase may only be used over rural land. Rural land means land other than excluded land. Excluded land has the same meaning as in Part 2 of the Land Reform (Scotland) Act 2003, which, following amendments made by the Community Empowerment (Scotland) Act 2015, now means “land consisting of a separate tenement (i.e. interest in land) which is owned separately from the land in respect of which it is exigible”. This definition is subject to exceptions for land consisting of salmon fishings and certain mineral rights.

This Order amends the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 (S.S.I. 2004/477) by adding three bodies, Argyll and Bute Council, Hebridean Housing Partnership Limited and Urras Oighreachd Ghabhsainn, to the schedule of prescribed rural housing bodies.

Argyll and Bute Council, Hebridean Housing Partnership Limited and Urras Oighreachd Ghabhsainn comply with the requirements of section 43(6) of the 2003 Act.

Previous amending Orders designating rural housing bodies were made in 2004, 2006, 2007, 2008, 2013, 2014, 2017 and 2019. **Annex B** provides a list of all currently prescribed rural housing bodies to date.

#### **EU Alignment Consideration**

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

#### **Consultation**

No formal consultation was required to be carried out in relation to this Order. Applicants either meet the terms of the legislation (Conservation Body or Rural Housing Body) or they do not.

## **Impact Assessments**

An equality impact assessment (EQIA) has been undertaken covering both conservation body and the rural housing bodies applications and is attached. This was to ensure that the policy for rural housing bodies which is to provide housing with the protection of the rural housing burden to keep such properties affordable does not have any impact on equality issues. No issues were identified. The conservation burden was also considered as due to the potential to protect or preserve architectural, historical or other special characteristics of land for the benefit of the public. It was also concluded that it does not have any impact on equality issues.

A Business and Regulatory Impact Assessment (BRIA) has been completed for rural housing bodies and is attached.

A pre-screening Strategic Environment Assessment (SEA) was completed for the conservation body and concluded that no fuller SEA was required to be undertaken. This can be found on the SEA register.

There are no equality/children's/privacy, etc. impact issues.

No further impact assessments were undertaken.

## **Financial Effects**

### *Rural Housing Bodies*

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that overall this is a positive impact on existing businesses in the area. By providing affordable housing this will work towards retaining local people. It may also support the attraction and retention of suitably qualified essential workers in the area to support business growth. This will contribute to sustaining existing businesses and possibly have the potential to attract new businesses.

### *Conservation Body*

The Minister for Victims and Community Safety confirms that no BRIA is necessary as the regulations for Conservation Bodies have no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Civil Law and Legal System Division  
Justice Directorate

September 2023

## ANNEX A: LIST OF PRESCRIBED CONSERVATION BODIES

### Part 1 Local Authorities

Aberdeen City Council	Highland Council
Aberdeenshire Council	Inverclyde Council
Angus Council	Midlothian Council
Argyll and Bute Council	Moray Council
City of Edinburgh Council	North Ayrshire Council
Clackmannanshire Council	North Lanarkshire Council
Comhairle nan Eilean Siar	Orkney Islands Council
Dumfries and Galloway Council	Perth and Kinross Council
Dundee City Council	Renfrewshire Council
East Ayrshire Council	Scottish Borders Council
East Dunbartonshire Council	Shetland Islands Council
East Lothian Council	South Ayrshire Council
East Renfrewshire Council	South Lanarkshire Council
Falkirk Council	Stirling Council
Fife Council	West Dunbartonshire Council
Glasgow City Council	West Lothian Council

### Part 2 Other Bodies

Alba Conservation Trust	Solway Heritage
Aberdeen City Heritage Trust	Stirling City Heritage Trust
Castles of Scotland Preservation Trust	St Vincent Crescent Preservation Trust
Chapleton Community Interest Company	Strathclyde Building Preservation Trust
Dundee Historic Environment Trust	Tayside Building Preservation Trust
Edinburgh World Heritage Trust	The John Muir Trust
Glasgow Building Preservation Trust	The National Trust for Scotland for Places of Historic Interest or Natural Beauty
Highland Buildings Preservation Trust	The Royal Society for the Protection of Birds
Historic Environment Scotland	The Scottish Wildlife Trust
Inverness City Heritage Trust	The Trustees of The Landmark Trust
New Lanark Trust	The Woodland Trust
Plantlife - The Wild-Plant Conservation Charity	Tornagrain Conservation Trust
Scottish Natural Heritage	United Kingdom Historic Building Preservation Trust
Sir Henry Wade's Pilmuir Trust	

## ANNEX B: LIST OF PRESCRIBED RURAL HOUSING BODIES

Albyn Housing Society Limited	Isle of Jura Development Trust
Arran Development Trust	Kilfinan Community Forest Company
Argyll Community Housing Association	Lochaber Housing Association Limited
Barra and Vatersay Housing Association Limited	Muirneag Housing Association Limited
Berneray Housing Association Limited	Mull and Iona Community Trust
Buidheann Taigheadais na Meadhanan Limited	North West Mull Community Woodland Company Limited
Buidheann Tigheadas Loch Aillse Agus An Eilein Sgitheanaich Limited	Orkney Islands Council
Cairn Housing Association Limited	Pentland Housing Association Limited
Colonsay Community Development Company	Rural Stirling Housing Association Limited
Comhairle nan Eilean Siar	Taighean Ceann a Tuath na' Hearadh Limited
Community Self-Build Scotland Limited	The Highland Housing Alliance
Craignish Community Company Limited	The Highlands Small Communities' Housing Trust
Dormont Passive Homes (Scotland) Ltd	The Isle of Eigg Heritage Trust
Down to Earth Solutions Community Interest Company	The Isle of Gigha Heritage Trust
Dumfries and Galloway Small Communities Housing Trust	The North Harris Trust
Dunbritton Housing Association Limited	Tighean Innse Gall Limited
Ekopia Resource Exchange Limited	West Harris Trust
Fyne Homes Limited	West Highland Housing Association Limited
Fyne Initiatives Limited	West Highland Rural Solutions Limited
HIFAR Limited	Yuill Community Trust C.I.C.

**Civil Law and Legal System Division  
September 2023**