

Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015

Analysis of consultation responses

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Consultation on secondary legislation proposals relating to Part 3A of the Land Reform (Scotland) Act 2003 – the community right to buy abandoned, neglected or detrimental land as introduced by the Community Empowerment (Scotland) Act 2015

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1. Executive Summary

The Community Empowerment (Scotland) Act 2015 amended the Land Reform (Scotland) Act 2003 with regard to the provisions relating to community right to buy abandoned, neglected and detrimental land. This resulted in a number of policy proposals emerging for secondary legislation.

The Scottish Government sought views on these from relevant organisations and individuals in a consultation document published on 21 March 2016. It asked for responses by 20 June 2016.

51 responses were received, 49 from organisations and two from individuals. A summary of views from the responses follows.

Land which is eligible for purchase by a Part 3A community body

Most of the respondents (68%) were content with the proposals. However, some of them were more concerned about the assessment of applications and the criteria to be used, and clarification of some of those criteria, than whether or not land would be eligible.

Some respondents also commented on the largely physical nature of the elements around the “harm” element of the eligibility criteria. They stated that other non-physical elements, such as the social development, should be taken into account.

Land pertaining to land on which there is a building or structure which is a person’s “home”

Most of the respondents (78%) were content with the proposals. However, some of the respondents who stated that they were content, had further comments which suggested that they did not entirely agree with the proposals.

Again, some of their issues were about clarification of some of the criteria. For example, several respondents stated that conditions such as access, vehicle storage etc. should be restricted to that associated with ownership of the home.

One respondent suggested that an area based approach could be used to determine what is considered to be within the curtilage of a house. They also noted that it was not currently a defined term.

Proposals for additional types of land that should not be eligible included; space for generating electricity for the home, essential services for a house such as a septic tank, soak away or a well/borehole to provide fresh water or land containing service media or infrastructure for a home. Other suggestions included land used for agricultural purposes, or land that already had planning permission.

Descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy

67% of those who responded agreed with the proposals.

The main concern of the respondents who disagreed with the proposals was that the complexity of tenancy agreements made it difficult to easily classify “types”. One respondent suggested that the proposals around agricultural and crofting tenancies should be further clarified. Concern was also expressed that individuals occupying a building without the owner’s permission could be covered under these definitions.

List of prescribed regulators

All of the respondents were in favour of the proposals. Some of them suggested that additional bodies should be added to the list. These included; Forestry Commission Scotland, Scottish Enterprise, Office of the Scottish Charity Regulator, and the Scottish Government Rural Payments and Inspections Directorate.

There was one correction: that Historic Scotland should now be referred to as Historic Environment Scotland.

Prohibitions on sale or transfer of land

80% of the respondents agreed with these proposals. Respondents only had minor comments in relation to the proposals. One suggested that the prohibition should be placed as soon as the community indicated that it was interested in the land. Another proposed that the date on which the notice was served should not be affected by the “vagaries of the postal system”.

Persons subject to prohibition

67% of the respondents were in favour of the proposals.

One respondent suggested that if the land had become abandoned or neglected due to the fact that the owner may have lost the capacity to manage the land, then any guardian or some such person should also be subject to the prohibition. Another suggested that the suspension of rights relating to the transfer of land by agricultural or crofting tenants should also be included.

Transfers or dealings not subject to these regulations

57% of the respondents agreed with the proposals. Those that disagreed did not do so entirely, but only with some aspects.

For example, one respondent considered that the exceptions, including the anti-avoidance provisions, should be more closely aligned with the wording used in the Community Right to Buy. Another wished to add an exception for mortis causa transfers.

One responder requested that the regulations should not prevent the voluntary transfer from the owner to the Part 3A community body.

Suspension of rights over the land

As with the previous question, 57% of respondents agreed with the proposals.

One respondent was concerned that the power might not be within scope of the powers in the Act. This is because any suspension would not be enforceable

against the community body (as the Act does allow for this) and it would be lost if the community gained ownership; the former owner could be found in breach of contract.

Other respondents considered that the proposals required more detail to be added for clarification purposes.

One respondent believed that practical commercial issues should also be considered in order to prevent arbitrary results.

Provision for or in connection with enabling a Part 3A community body to apply for the cost of ballot expenses to be reimbursed

Respondents were split evenly on this question, with 50% agreeing and 50% disagreeing.

One respondent considered that the 21 day period for the appeal was too short and that 60 days would be more realistic. Others requested that a timescale should be placed on the timetable for compensation, although they had different views on that timescale.

Entitlement to compensation

The majority of the respondents (60%) disagreed with the proposal.

The respondents had various reasons why they disagreed with the proposal. They included; the timescale was too short, there was no specification of the calculation used to determine the amount of compensation, there was no detail as to what type of expenses were eligible, there should be parity of the information required from both parties, and there should be a set time limit for the payment of compensation.

2. Introduction

Consultation Responses

Table 2.1: Respondents to the Consultation

Respondent	Category
The Highland Council	Organisation
Youth Juice Creative	Organisation
Community Land Advisory Service	Organisation
Friends of Midmar Inn Community Company	Organisation
Dundonald Community Council	Organisation
Crieff Community Trust	Organisation
East Ayrshire Council	Organisation
CLEAR Buckhaven	Individual
Ailsa Macmillan Smith	Individual
Community Land Scotland	Organisation
North Lanarkshire Council	Organisation
Comhairle nan Eilean Siar	Organisation
Perth and Kinross Council (Community Planning Partnership)	Organisation
Development Trusts Association Scotland	Organisation
West Lothian Council	Organisation
Shetland Partnership	Organisation
West Dunbartonshire Council	Organisation
Scottish Natural Heritage	Organisation
COSLA	Organisation
Midlothian Council	Organisation
East Renfrewshire Council	Organisation
North Ayrshire Council	Organisation
Scottish Federation of Housing Associations	Organisation
Scottish Property Federation	Organisation
Highlands and Islands Enterprise	Organisation
Big Lottery Fund	Organisation
Scottish Borders Council	Organisation
Law Society of Scotland	Organisation
Scottish Empty Homes Partnership	Organisation
South Ayrshire Council	Organisation
Historic Houses Association Scotland	Organisation
Scottish Land & Estates	Organisation
NFU Scotland	Organisation
Brodies LLP	Organisation
Scottish Water	Organisation
Scottish Canals (the operating name of the British Waterways Board)	Organisation
the National Trust for Scotland	Organisation
Chartered Institute of Housing Scotland	Organisation

Respondent	Category
East Ayrshire Council	Organisation
Historic Environment Scotland	Organisation
PAS	Organisation
Shetland Islands Council	Organisation
Anon	Organisation

Analysis of Responses

The analysis of responses is presented in the following chapters. This follows the order of the topics raised in the consultation paper. A total of 12 questions and a further 26 sub-questions, were posed by the consultation inviting a mix of closed and open responses. The analysis of responses to these is based on the views of those who responded to the consultation which are not necessarily representative of the wider population and cannot be extrapolated further.

Most respondents used Citizen Space to submit their views.

3. Land which is eligible for purchase by a Part 3A community body

Background

When deciding whether land is eligible to be bought by a Part 3A community body, either because it is abandoned or neglected or because the use or management of it is causing harm to the environmental wellbeing of the local community, Ministers are required to have regard to prescribed matters.

The consultation includes a list of the prescribed matters to which the Scottish Government consider Ministers should have regard when deciding whether land is eligible land.

These are:

- The physical condition of the land or any building or other structure on the land, and the length of time for which it has been in such a condition;
- Whether, and to what extent, the physical condition of the land or any building or other structure on the land is detrimental to the amenity of land which is adjacent to it;
- Whether, and to what extent, the physical condition of the land is a risk to public safety;
- Whether the physical condition of the land or any building or other structure on the land is causing or is likely to cause environmental harm;
- Whether the physical condition of the land complies with the standards for good agricultural and environmental condition;
- The purpose for which the land or any building or other structure is being used or has been used, and the length of time for which it has been so used;
- If it appears to the Scottish Ministers that the land or any building or other structure on the land is not being used for any particular purpose, the length of time for which it has not been so used;
- Whether, and to what extent, the land or any building or other structure on the land is being used for public recreation;
- Whether, and to what extent, the land is being held for the purposes of permanent preservation for the benefit of historic or national interest and for the preservation of its natural aspect and features and animal and plant life;
- Whether, and to what extent, any building or other structure on the land is being held for the purposes of the permanent preservation for the benefit of historic or national interest and for the preservation of its architectural or historical features so far as of national or historic interest;

- Whether the land, or any part of the land, is or forms part of a nature reserve or conservation area;
- Whether the land, or any part of the land, is designated a special site;
- Whether any building or structure on the land is a listed building;
- Whether any building or structure on the land is a scheduled monument.

Question 1: Do you agree with the above matters?

41 respondents answered this question, with 28 agreeing and 13 disagreeing.

Question 1a: If not, why not?

24 respondents answered this question. The response indicates that some respondents who stated that they agreed with the proposals, did not, however, entirely agree.

The majority of respondents to this question asked for clarification of the criteria used.

For example, West Dunbartonshire Council stated that it was “generally concerned about lack of specification. In terms of matter five in the table, can further clarification be provided on what is considered to be the standard for land in a good agricultural and environmental condition? In terms of matter seven in the table, how is it proposed to establish whether land not being used for a particular purpose and the length of time so unused? Presumably detailed Guidance will be provided on these matters.”

Shetland Islands Council stated that “These criteria are non-specific. They do not define the standards that they would apply and do not, for example, define timescales. Also, where does the evidence come from and who verifies it?”

Highlands and Islands Enterprise was concerned that the matters relating to harm were “strongly focused on the physical condition of the land does not include wider social and community development considerations.”

Other respondents mentioned categories that should be added or removed. Some repeated these in their responses to question 2 or 3.

One respondent, Community Land Advisory Service, considered that the three elements (abandoned, neglected or causing harm) were three separate issues and should be treated as such.

Question 1b: Are there any matters you believe should be added?

36 respondents answered this question.

Not all of the respondents listed additional matters. Some addressed procedural issues, such as the introduction of a resale clause, or reasons for the condition of the land and consideration of economic impact.

Additional matters included;

- Local Authority Enforcement Notices
- Transport Corridors
- Local Authority Local Development Plans
- Land used for access to adjoining property

- Land used for drainage
- Land designated for future housing development
- Land with live planning permission
- Land which forms part of an agricultural business
- Conservation agreements.

Other respondents, such as Community Land Scotland, expanded further on the comments made in relation to the consideration of harm. They believed that it is about more than physical considerations. They suggested that additional consideration should be given to the following matters:

- Whether and to what extent the condition, management or use of the land is detrimental to the amenity and prospects of the relevant community;
- Whether and to what extent the condition, management or use of the land is detrimental to the preservation of the relevant community or its development;
- Whether and to what extent the condition of the land, its management or use contributes to reducing the social development of the relevant community;
- Whether it appears to Scottish Ministers, and to what extent, the condition, management or use of the land is detrimental to the realisation of the human rights of the relevant community.

Question 1c: Are there any matters you believe should be removed?

21 respondents answered this question.

Most respondents simply stated that they did not want to see any of the matters removed. The only exception was Community Land Advisory Service. It stated that Public Recreation should be removed as it was irrelevant and could have unintended results as a result of unauthorised recreational use being held up as evidence that the land is not abandoned or neglected. It also considered that the 9th-14th bullets (relating to historic, scheduled or listed buildings/sites) should be removed as they are not needed or relevant to the decisions made by Ministers. This is because there will clearly be evidence of conservation or preservation in relation to that land.

4. Land pertaining to land on which there is a building or structure which is a person's "home"

Background

Section 97C(5)(a) of the 2003 Act provides that land which is eligible for purchase by a Part 3A community body does not include land on which there is a building or other structure which is a building or other structure which is an individual's home other than a building or other structure which is occupied by an individual under the terms of a tenancy.

Land pertaining to land which is to be treated as a person's home will not be eligible land which can be bought by Part 3A community bodies, unless that home is occupied by an individual under the terms of a tenancy.

The Scottish Government proposals seek to describe the land that should be treated as land pertaining to a building or structure which is a person's home for the purposes of section 97C(5)(b) of the 2003 Act.

This is that that land pertaining to a person's home may include a number of elements. Each of these elements may have a number of roles for the home. Along with the proposal that land within the curtilage of a home should be land pertaining to a home, the consultation listed several categories of land that should also be included. These are:

- Land which is used for access to the home;
- Land which is used for storage of personal possessions for the maintenance and upkeep of the house and any vehicles;
- Land which is used for space to store fuel and other necessities to provide subsistence for the house;
- Land which is used for space to generate heat and warmth for the home;
- Land which is used for space to grow food and provide other subsistence;
- Land which is used for activities pertaining to maintaining the home;
- Land which is used for space in an outbuilding for business use;
- Land which is used for space to enjoy the house and personal space around the house so as to allow privacy within the house.

Question 2: Do you agree that the above types of land should be land pertaining to land that is a person's home?

37 respondents answered this question, with 29 agreeing and 8 disagreeing.

Question 2a: If not, please explain.

17 respondents answered this question. Like question 1, their responses indicated that those in agreement still has some issues.

Some of their issues were about clarification of a number of the criteria. For example, several respondents stated that conditions such as access, vehicle storage etc. should only be associated with the ownership of the home.

One respondent suggested that an area based approach could be used to determine what was considered to be within the curtilage of a house. They also noted that this was not currently a defined term.

Question 2b: Are there any types of land that you believe should be added?

Five respondents answered this question. Some of the additional types of land that were suggested were;

- Space for generating electricity for the home
- Essential services for a house such as a septic tank, soak away or a well/borehole to provide fresh water
- Land containing service media or infrastructure for a home
- Designed Landscape
- Listing e.g. contained within the same conservation listing as the home
- Sites of Special Scientific Interest
- Land deemed to meet good agricultural and environmental condition.

Question 2c: Are there any types of land that you believe should be removed?

Two respondents answered this question. One stated that it did not have any types of land that should be removed. The other stated that land which is used to grow food should be restricted to food actively grown for domestic consumption.

Question 2d: Are there any descriptions or classes of land that you believe should not be eligible for purchase by a Part 3A community body?

Six respondents answered this question. However, two simply stated that they had no descriptions or classes of land. One referred to their answer in question 1.

The Law Society of Scotland also referred to its answer for question 1, as far as land within a development plan or that had planning permission. It suggested that this land could be excluded.

Scottish Land & Estates also proposed that land with development plans and with planning permission should be excluded. It also suggested that land which meets GAEC and land which is deemed to be eligible hectares for the purpose of the Basic Payment Scheme should also be excluded.

5. Descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy – land which will be eligible for purchase by a Part 3A community body

Background

Section 97C(6)(b) of the 2003 Act allows Ministers to set out in regulations the descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of Part 3A of the Land Reform (Scotland) Act 2003.

The Scottish Government proposes that land on which there is a building or structure which is occupied by a person under a tenancy will be an exception to the exclusion of an individual's home from eligible land. In other words, it will be able to be the subject of a right to buy application.

Ministers have the power under section 97C(6)(b) of the 2003 Act to set out descriptions or classes of occupancy or possession which are, or are to be treated as, tenancies for the purposes of section 97C(5)(a). The exception to the exclusion of homes from the definition of eligible land covers all tenancies (including common law and statutory tenancies), regardless of whether they are set out in such regulations. However, they are considering using the power in section 97C(6)(a) to clarify that the classes of occupancy or possession listed are those which they consider are, or should be treated as, tenancies for the purposes of section 97C(5)(a) of Part 3A of the 2003 Act.

These are; tied accommodation; license agreement; university student, hospital staff accommodation etc., night-by-night temporary accommodation or tenancy on a temporary basis for homeless persons; and life-rent.

Question 3: Do you agree with the above descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of Part 3A of the Land Reform (Scotland) Act 2003?

Six respondents answered this question. Four agreed with the proposals and two disagreed.

Question 3a: If not, please explain

Two respondents answered this question.

Community Land Advisory Service did not agree with any of the types of tenancy. It gave reasons for its views. These mostly related to the complexities of tenancy agreements of any type. It also expressed concern that there could be unintended consequences of the definitions as proposed in the consultation.

The other respondent suggested that there was no need to cover licences. It stated that "Whether something is a properly a lease or a licence (i.e. some form of occupational right that lacks one of the essential element of a lease) is a question of fact and is not determined by what the name the contract is dressed up in."

Question 3b: Are there any descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy, that you believe should be added?

Three respondents answered this question. However, one simply stated that it did not have any descriptions or classes that should be added.

Scottish Land & Estates suggested that there needed to be some clarification on agricultural and crofting tenancies other than accommodation provided as part of employment.

Community Land Advisory Service suggested that consideration should be given to whether the situation in which someone is occupying a building as a home without the consent of the owner should be treated as a tenancy. It proposed that it should not.

Question 3c: Are there any descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy that you believe should be removed?

Two respondents answered this question. However, neither listed any types that should be removed. Instead, they stated that they had none, or referred to their previous answer.

6. List of prescribed regulators

Background

Section 97H(5)(b) of the 2003 Act requires a Part 3A community body to make a request to all relevant regulators. The regulators listed below include bodies that are authorised to invoke legislation, regulatory rules etc., or to take action that could, or might reasonably be expected to, remedy or mitigate the harm that the use or management of the land which is the subject of the Part 3A application is causing to the environmental wellbeing of the relevant community.

Section 97H(6) gives Ministers the power to prescribe in regulations what description of person, body or office-holder is a regulator for the purposes of Part 3A of the 2003 Act.

Proposals

The Scottish Government proposes that a regulator is a person, body or office-holder having the power to carry out “regulatory functions”. The term “regulatory functions” is defined in section 97H(6)(d).

The consultation included a table with examples of what may be considered to be regulators. This listed: Cairngorms National Park Authority; Civilian Aviation Authority; Food Standards Scotland; Health and Safety Executive; Historic Scotland; Local Authority – General Licensing; Local Authority – Housing; Local Authority – Planning; Local Authority – Road Traffic; Loch Lomond and Trossachs National Park; Marine Scotland; Ofcom; Ofgem; Office for Nuclear Regulation; Office of Rail and Road; Scottish Environment Protection Agency; Scottish Housing Regulator; Scottish Natural Heritage; Scottish Police Authority; Scottish Water; and Transport Scotland.

Question 4: Do you agree that a regulator should be described as a person, body or office-holder that has the power to carry out regulatory functions?

Five respondents answered this question. All were in agreement with the proposal.

Question 4a: If not, please explain

There were no responses to this question.

Question 4b: Are there any persons, bodies or office-holders that you believe should be included in the definition of regulator, but are not listed above?

There were four responses to this question. One corrected the fact that Historic Scotland should now be referred to as Historic Environment Scotland.

Additional bodies that were suggested were;

- Forestry Commission Scotland
- Crofting Commission
- Scottish Enterprise
- Highlands & Islands Enterprise
- The Water Industry Commission for Scotland

- Local Authority – Environmental Health
- Office of the Scottish Charity Regulator
- Scottish Government Rural Payments and Inspections Directorate.

Question 4c: Are there any persons, bodies or office-holders that you believe should not be included in the definition of regulator?

There were three responses to this question. However, two stated that they had none. The other corrected the reference to Historic Scotland.

7. Prohibitions on sale or transfer of land; suspension of rights

Background

Section 97N(1) of the 2003 Act gives Ministers the power to, by way of regulations, make provision for or in connection with prohibiting certain persons from transferring or otherwise dealing with land which is the subject of the Part 3A application once that application has been registered, and the period of time for which the transfer or dealings in that land is prohibited.

Section 97N(2) of the 2003 Act sets out what Ministers may include in such regulations. One such power allows Ministers to set out the transfers or dealings in relation to the land which are not prohibited by the regulations set out in section 97N(1).

Section 97N(3) of the 2003 Act gives Ministers the power to, by way of regulations, make provision for or in connection with suspending rights in or over land which is the subject of a Part 3A application.

Proposals

Following receipt of a valid application, the Scottish Government considers that the prohibition or suspension of rights will come into operation from the date on which the owner or, as the case may be, the creditor in a standard security with the right to sell the land, receives the notice of prohibition. The prohibition notice will accompany the notice(s) sent under section 97G(9)(a)(i) or (iii) of the 2003 Act.

Question 5: Do you think the proposed dates are appropriate?

There were five responses to this question. Four agreed with the proposals and one disagreed.

Question 5a: If not, please explain

There were three responses to this question. Only one disagreed with the proposals.

Friends of Midmar Inn Community Company suggested that the date should be the point at which a community group indicates that it will be submitting an application.

Community Energy Scotland considered it should be the date of receipt of a valid application.

Scottish Land & Estates stated that “Whilst the proposed date makes sense, service of the notice will be a critical step in the process. We believe that the owner or creditor as the case may be cannot be held liable for the vagaries of the postal system.”

8. Date prohibition or suspension of rights lifted

Background

The Scottish Government considers that the prohibition or suspension of rights should be lifted on the following dates, as appropriate in the circumstances:

- The date Ministers send notice under section 97M(1) of the 2003 Act declining to consent to an application;
- The date on which the Sheriff issues a decision in an appeal under section 97V(1), (4) or (5) if the Sheriff finds in favour of the pursuer;
- The date Ministers send, in accordance with section 97P(3) of the 2003 Act, acknowledgement of receipt of a notice from a Part 3A community body made under section 97P(2) of the 2003 Act;
- The date the application is treated as withdrawn under section 97R(5) of the 2003 Act as a result of the consideration remaining unpaid after the date on which it is to be paid;
- The date a community body completes transfer of the land under section 97R of the 2003 Act.

Question 6: Do you think the proposed dates are appropriate?

There were six responses to this question. All agreed with the proposals.

Question 6a: If not, please explain

There were no responses to this question.

9. Persons subject to prohibition

Background

The Scottish Government considers that the following persons should be subject to the prohibition of the sale or transfer of land and suspension of rights under sections 97N(1) or 97N(3) of the 2003 Act. These are:

- Landowner
- Creditor in standard security with the right to sell the land.

Question 7: Do you agree with the proposals?

There were six responses to this question. Four agreed and two disagreed with the proposals.

Question 7a: If not, please explain

There were two responses to this question.

Community Land Advisory Service suggested that as land may become abandoned etc. because the owner may have lost capacity, the prohibition should also apply to any guardian or person appointed under an intervention order in respect of the owner in terms of the Adults with Incapacity (Scotland) Act 2000. It also considered that the prohibition should apply to anyone authorised by the owner to sell or transfer the land under a power of attorney or contract of mandate, or any administrator, receiver or trustee in sequestration appointed to owner (including equivalent roles in foreign legal systems).

Scottish Land & Estates suggested that the suspension of rights relating to the transfer or acquisition of land by agricultural and crofting tenants should also be considered.

10. Transfers or dealings not subject to these regulations

Background

The Scottish Government considers that a prohibition should not apply in the following circumstances:

- A transfer to implement or in pursuance of an order of court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 or a decree in an action for the division and sale of land);
- A transfer between spouses or civil partners in pursuance of a written arrangement between them entered into at any time after they have ceased living together;
- A transfer to a statutory undertaker for the purposes of carrying on their undertaking;
- A transfer implementing the compulsory acquisition of the land under an enactment;
- A transfer by agreement of land which would have been acquired compulsorily under an enactment if an agreement had not been made;
- A transfer of land in pursuance of missives concluded for the sale of the land prior to the date the owner was notified of the Part 3A application;
- A transfer vesting the land in a person for the purpose of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed; or
- A transfer of land in consequence of (1) the assumption or resignation or death of one or more of the partners in a firm, or, (2) the assumption or resignation or death of one or more of the trustees of a trust.

The Scottish Government also considers that the landowner or creditor may, if they wish and at their own risk, take steps short of transfer, subject to the suspension of rights provided by section 97N(3).

Question 8: Do you agree with the above list of transfers or dealings?

There were seven responses to this question. Four agreed with the proposals and three disagreed.

Question 8a: If not, please explain

There were four responses to this question. However, not all entirely disagreed with the proposals.

Community Land Advisory Service stated that the proposed exception for the case where missives have been concluded prior to the date of notification should be expressed more generally as a contract having been concluded.

Friends of Midmar Inn Community Company believed that these relaxed the prohibitions in place, which should not happen in any cases.

Highlands and Islands Enterprise agreed in general with the list of transfers or dealings but considered that it should more closely align with those in Section 40 of the Community Right to Buy.

The final respondent asked that there should also be an exception for mortis causa transfers.

Question 8b: Are there any that you believe should be added?

There were three responses to this question. However, one stated that it had nothing to add.

Community Land Advisory Service asked that the prohibition should not prevent the voluntary transfer from the owner to the Part 3A community body.

Highlands and Islands Enterprise commented that the Part 3A right to buy would be strengthened by the inclusion of the same anti-avoidance provisions that were in the Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003.

Question 8c: Are there any that you believe should be removed?

There were two responses to this question. However, both simply stated that they had no recommendations.

11. Suspension of rights over the land

Background

The Scottish Government considers that the following rights, if they were to be exercised, may prevent a Part 3A application from being properly considered. Therefore it is considering whether to suspend some or all of these rights whilst a Part 3A application is being considered by Ministers. Any suspension of rights will be lifted on a date as listed under section 97N(1) and 97N(3) date of prohibition and suspension of rights above:

- Pre-emption rights, except those arising from option agreements, which allow a party to purchase property if the landowner sells that property;
- Redemption rights and reversion rights which give another party the right to take back property from the owner at any time, not just when the landowner sells the property;
- Rights deriving from any option to purchase which apply where parties have agreed that land may be sold by the owner to a prospective purchaser, either at some point in the future or only if certain circumstances apply (e.g. obtaining planning permission);
- Any right of pre-emption granted under Part 2 of the 2003 Act;
- An asset transfer request made under Part 5 of the 2015 Act.

Question 9: Do you agree with the above proposals?

There were seven responses to this question. Four were in agreement and three were not.

Question 9a: If not, please explain

There were three responses to this question.

Community Land Advisory Service considered that the suspension of rights might not be within scope of the powers in the Act. It believed that any suspension would not be enforceable against the community body (as the Act does allow for this) and would be lost if the community gained ownership; the former owner could be found in breach of contract.

Scottish Land & Estates and another respondent appreciated the logic of suspending rights. However, they thought that the proposals were unclear, particularly when comparing some rights against others. Both provided detailed examples to illustrate their point.

Question 9b: Are there any other rights that you believe should be suspended? If so, please give details

There were four responses to this question. However, three respondents stated that they had no other examples to add.

The final respondent stated that practical commercial issues should also be considered in order to prevent arbitrary results.

Question 9c: Are there any of these rights that you believe should not be suspended?

There were four responses to this question. One respondent stated that it had no suggestions, while another two referred to their previous answers.

The final respondent suggested that there was no need for a right of pre-emption under the Community Right to Buy in Part 2 of the Land Reform (Scotland) Act 2003, or an asset transfer, to be on the list.

12. Provision for or in connection with enabling a Part 3A community body to apply for the cost of ballot expenses to be reimbursed

Background

Section 97J(7) of the 2003 Act allows Ministers to, by regulations make provision for, or in connection with, enabling a Part 3A community body, in such circumstances as may be specified in the regulations, to apply to them to seek reimbursement of the expense of conducting a ballot under this section.

The Scottish Government considers that it was not appropriate for Ministers to meet the cost of the ballot at the outset of the Part 3A community right to buy process, however they consider that, in certain circumstances, the community body should be reimbursed the cost of the ballot when an application for reimbursement of the cost is received by Ministers upon completion of the Part 3A right to buy process.

The proposals outline the circumstances in which Part 3A community bodies should be able to seek reimbursement of the ballot costs.

The Scottish Government is considering whether Part 3A community bodies may apply for reimbursement of the cost of conducting the ballot in some or all of the following circumstances:

- The Part 3A application has been consented to by Scottish Ministers;
- The land has been transferred to the Part 3A community body;
- The ballot for which reimbursement costs are claimed from Scottish Ministers by the Part 3A community body must have been conducted in accordance with the ballot provisions contained within section 97J of Part 3A of the 2003 Act, and the ballot provisions that are prescribed under section 97J(2);
- The community must have approved the Part 3A community body's proposal to buy the land in accordance with section 97J(1) of the 2003 Act by way of the ballot for which the reimbursement of expenses are claimed.

Question 10: Do you agree with these proposals?

There were six responses to this question, with four agreeing with the proposals and two disagreeing.

Question 10a: If not, please explain

There were three responses to this question.

Community Land Advisory Service stated that it was unclear whether or not all of the conditions had to be met, or just some. It considered that the only conditions should be; the ballot was conducted in accordance with the Act and it was reasonable for Ministers to provide reimbursement. It did not think that community approval should be a condition.

Highlands and Islands Enterprise questioned whether the right to buy process should be completed before reimbursement could be claimed. It considered that community bodies should be able to claim for compensation at the earliest opportunity. It did not state when that would be.

Scottish Land & Estates stated that reimbursement of costs should only be given when all of the conditions were met.

Question 10b: Are there any other circumstances under which you believe a community body should be able to apply for reimbursement?

There were three responses to this question. One simply stated that it had no suggestions; another referred to its previous answer.

Highlands and Islands Enterprise suggested that as long as the application is deemed competent, then compensation should still be paid where Ministers do not consent to that application.

13. Provision for or in connection with enabling a Part 3A community body to apply for the cost of ballot expenses to be reimbursed.

Background

The Scottish Government considers that the following procedures should be followed when applying for reimbursement of the full cost of conducting the ballot:

- The application for reimbursement of ballot costs, in the form of a letter from the community body, must be fully vouched. If a third party or contractor has been used for any part of the ballot process, that third party contractor's original invoice and proof of full payment to the third party or contractor by the community body must be provided with the application for reimbursement of costs sent to Ministers;
- The application for reimbursement of ballot costs must be made to Scottish Ministers within 2 months following the date of transfer of the land to the community body;
- Any appeal of the ministerial decision should be made to the Lands Tribunal within 21 days of receiving that decision.

Question 11: Do you agree with these proposals?

There were six responses to this question. Three agreed and three disagreed with the proposals.

Question 11a: If not, please explain

There were three responses to this question.

Community Land Advisory Service considered that the 21 day period for the appeal was too short and that 60 days would be more realistic.

Highlands and Islands Enterprise suggested that a timescale of two months from the date of transfer of the land should be placed on the payment of compensation. It did not consider that it was appropriate that the transfer should be concluded before the application for compensation could be made.

Scottish Land & Estates considered that it should be more explicit than simply stating “the ballot process”. It believed that compensation must directly relate to the ballot. It proposed that one month from the date of transfer would be more appropriate for the application to be received.

14. Entitlement to compensation

Background

Section 97T of the 2003 Act allows any person, in the circumstances listed in section 97T(1) of the 2003 Act, including the current or former landowner, to recover loss or expense from either the Part 3A community body (if the application was consented to) or Scottish Ministers (if the application was refused).

Proposals

The Scottish Government considers that the following procedures should apply in order for an application for compensation to be made:

- The claim for compensation is to be made within 90 days of: (i) the final settlement date for the purchase of the land by the Part 3A community body, (ii) the date the Part 3A community body withdraw their application, or (iii) the date Ministers rejected the Part 3A community right to buy application, as is applicable in the circumstances;
- The claim for compensation is to be sent to the Part 3A community body’s address as noted on the application, if the compensation is payable by the Part 3A community body;
- The claim for compensation is to be sent to Scottish Ministers if the compensation is to be paid by Ministers;
- The claim for compensation must be fully vouched and be accompanied by all original invoice(s) in respect of the fees, costs or expenses for which compensation is claimed, together with a clear explanation and complete breakdown of the compensation which is sought. Sufficient information must be provided to determine whether or not the amount is relevant to the claim being made, and that it is within the correct timescales;
- Ministers or the community body, as appropriate, will have 40 days to consider the application for compensation and determine the amount payable.

Question 12: Do you agree with these proposals?

There were five responses to this question. Two agreed and three disagreed with the proposals.

Question 12a: If not, please explain

There were four responses to this question.

Community Land Advisory Service disagreed with the 90 day time limit for the compensation claim. It considered that some consequences of the sale may not become apparent for some time.

Friends of Midmar Inn Community Company pointed out that the act did not specify how the calculation of compensation was to be carried out. In addition, it considered that both parties should be responsible for their own costs.

Community Energy Scotland considered that only necessary expenses should be claimed.

Scottish Land & Estates stated that there should be parity between the level of detail sought to justify a compensation claim and the detail provided in return in determining the relative success or otherwise of a claim. It proposed that there should be a set period between receipt of a claim and the decision by Ministers to avoid the process becoming drawn out.



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