

**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**

March 2016

Contents

Introduction	3
How to respond to this consultation	4
Detailed policy proposals :	
1. Section 97C(4) –Matters Ministers must have regard to when considering whether land is eligible land	7
2. Section 97C(5)(b) – Land pertaining to land on which there is a building or structure which is a person’s home	9
3. Section 97C(5)(f) – Other descriptions or classes of land which is not eligible land	10
4. Section 97C(6)(b) – Descriptions or classes of occupancy or possession which are, or will be treated as, a tenancy of a person’s home	11
5. Section 97H(6) – Proposed description of prescribed regulators	13
6. Section 97N(1) and 97N(3) – prohibitions on the transfer or dealing with land, and suspension of rights to the land	17
7. Section 97J(7) – circumstances in which a Part 3A community body can apply for the cost of ballot expenses to be reimbursed by Ministers	22
8. Section 97T(4) – entitlement to compensation	24

INTRODUCTION

This consultation seeks comments and feedback on policy proposals for some of the key aspects of the secondary legislation relating to the new Part 3A of the Land Reform (Scotland) Act 2003 (the “2003 Act”), the community right to buy abandoned, neglected or detrimental land. The new provisions in Part 3A of the 2003 Act were introduced by Part 4 of the Community Empowerment (Scotland) Act 2015 (the “2015 Act”). Any references in this consultation to the 2003 Act are to the 2003 Act as amended by the 2015 Act.

Part 3A of the 2003 Act

Part 3A of the 2003 Act gives community bodies the right, in certain circumstances, to buy land without a willing seller, when the land is wholly or mainly abandoned or neglected, or the use or management of the land is causing harm to the environmental wellbeing of the local community.

Before submitting the right to buy application the community body must fulfil certain criteria, for example:

- the community body must have tried to purchase the land,
- if the use or management of the land is causing harm to the environmental wellbeing of the local community, the community body must have approached all relevant regulators and asked that they take steps to reduce or remove the harm being caused to the community,
- the purchase of the land must be in the public interest, and
- the purchase of the land must be compatible with furthering the achievement of sustainable development of the land.

Proposals

The proposals contained in this consultation paper discuss:

- Matters which Ministers are required to have regard to when deciding whether land is eligible land for the purposes of Part 3A of the 2003 Act, that is land which is eligible for purchase by the Part 3A community body;
- Land pertaining to land on which there is a building or structure which is a person’s home. Such land will also form part of the person’s home so will not be eligible land;
- Other forms of land which is not eligible land;
- What forms of occupancy of possession of a home are, or are to be treated as, a tenancy of that home. Land on which there is such a home which is occupied under the terms of a tenancy is eligible land. Proposals discuss various forms of housing tenancy, and what land occupied under the terms of such a tenancy is eligible land;
- A description of prescribed regulators that a Part 3A community body will be required to approach, where relevant, to request that the regulators take action to mitigate the harm being caused to the environmental wellbeing of the community;
- What prohibitions or suspensions of rights will be placed on the transfer or dealing of land following receipt of a Part 3A application;
- The circumstances in which the Part 3A community body can apply for the cost of the ballot to be reimbursed by Ministers;

- The procedure by which any person, other than the applying Part 3A community body, may apply for compensation in respect of a loss or expense incurred as a result of a Part 3A application.

Responding to this Consultation

We are inviting responses to this consultation by 20 June 2016.

Please respond to this consultation online at <https://consult.scotland.gov.uk/community-land-team/abandoned-land>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the close date.

If you are unable to respond online, please complete the Respondent Information Form (see “Handling your Response” below) to:

Community Land Team

Agriculture, Food and Rural Communities Directorate

D Spur

Saughton House

Edinburgh

EH11 3XD

Or by email to : crtb@scotland.gsi.gov.uk

Handling your response

If you respond using Citizen Space, you will be automatically directed to the Respondent Information Form at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** attached to the end of this document as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the Community Land Team at the address above.

Scottish Government consultation process

Consultation is an essential part the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>)

After a consultation is closed we publish all responses where we have been given permission to do so.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

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



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number
Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (anonymous)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

DETAILED POLICY PROPOSALS

1. Section 97C(4) – Prescribe eligible land for the purposes of Part 3A – land which is eligible for purchase by a Part 3A community body

Background

1.1 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,¹ Ministers are required to have regard to prescribed matters.²

Proposals

1.2 The following table lists the prescribed matters to which we consider Ministers should have regard when deciding whether land is eligible land, in other words whether it is (i) abandoned or neglected land, or, (ii) land where the use or management of it is causing harm to the environmental wellbeing of the relevant community.

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 ³
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

¹ As per Part 3A of the Land Reform (Scotland) Act 2003 (the “2003 Act”), as introduced by Part 4 of the Community Empowerment (Scotland) Act 2015 (the “2015 Act”).

² See section 97C(4) of Part 3A of the 2003 Act.

³ “Environmental harm” has the meaning given to it in section 17(2) of the Regulatory Reform (Scotland) Act 2014. “Environmental harm” therefore means: (a) harm to the health of human beings or other living organisms, (b) harm to the quality of the environment, including (i) harm to the quality of the environment as a whole, (ii) harm to the quality of air, water or land, and (iii) other impairment of, or interference with, ecosystems, (c) offence to the senses of human beings, (d) damage to property, or (e) impairment of, or interference with, amenities or other legitimate uses of the environment

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 ⁴
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? Yes No

If not, please explain

Are there any matters you believe should be added? If so, please give details.

Are there any matters you believe should be removed? If so, please give details.

A “special site” is defined as a “special site” for the purposes of section 78C(1) of the Environmental Protection Act 1990, which is an area of land that the local authority has decided should be a designated as a special site because it is contaminated land⁴

2. Section 97C(5) – Land pertaining to land on which there is a building or structure which is a person’s “home”

Background

2.1 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 an individual’s home other than a building or other structure which is occupied by an individual under the terms of a tenancy.

2.2 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.

2.3 The following proposals seek to describe the land that we propose 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.

Proposals

2.4 We consider 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.

We propose that land within the curtilage of a home should be land pertaining to a home, along with the following categories of land:

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

Land which is within the curtilage of a home may include land on which there is a garage, shed, sunhouse, outhouse, greenhouse, lean-to, or outdoor toilet.

Question 2

Do you agree that the above types of land should be land pertaining to land that is a person’s home? Yes No

If not, please explain

Are there any types of land that you believe should be added? If so, please give details.

Are there any types of land that you believe should be removed? If so, please give details.

3. Section 97C(5)(f) – Descriptions or classes of land which is not eligible for purchase by a Part 3A community body

Background

3.1 Section 97C(5)(f) provides that Ministers may set out in regulations, descriptions or classes of other land which is not eligible land for the purposes of Part 3A of the 2003 Act.

Are there any descriptions or classes of land that you believe should not be eligible for purchase by a Part 3A community body? If so, please give details.

4. Section 97C(6)(b) – 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

4.1 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.

Proposals

4.2 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.

4.3 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, we are considering using the power in section 97C(6)(a) to clarify that the classes of occupancy or possession listed in the table below are those which we consider are, or should be treated as, tenancies for the purposes of section 97C(5)(a) of Part 3A of the 2003 Act.

4.4

Table 1

Classes of occupancy or possession treated as a tenancy	Class of occupancy or possession features
Tied accommodation	By “Tied” accommodation we mean accommodation provided with a person’s job, under a service occupancy agreement. This generally means where accommodation is provided by an employer in return or part return for working.

License agreement	Nearly all arrangements in the private rented sector are “tenancies”, however some landlords provide written agreements that are called “licence agreements” because they believe that a “licence” gives tenants fewer rights. We wish to make clear that if an arrangement is, in fact a tenancy, even if it is called a licence agreement it will still be treated as a tenancy for the purposes of section 97C(5)(a) of the 2003 Act.
University student, hospital staff accommodation etc.	By this we mean that the accommodation is occupied in connection with a particular employment or course of education, and is occupied by the occupier’s employer or the education establishment providing the occupier with education. .
Night-by-night / temporary accommodation or tenancy on a temporary basis for homeless persons	By this we mean where a person occupies a room in a hostel, hotel, night shelter etc on a nightly basis.
Life-rent	By life-rent we mean where a person has the right to receive for life the benefits of the property, and to live in the property for life.

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? Yes No

If not, please explain

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? If so, please give details.

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? If so, please give details.

5. Section 97H(6) – List of prescribed regulators

Background

5.1 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.

5.2 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

5.3 We propose 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).

To paraphrase, it means

- (a) functions conferred by or under any enactment
 - (i) imposing requirements, restrictions or conditions in relation to an activity,
 - (ii) setting standards or outcomes in relation to an activity or
 - (iii) giving guidance in relation to an activity or
- (b) functions which relate to the securing of compliance with, or enforcement of, requirements, restrictions, conditions, standards, outcomes or guidance which by or under any enactment relate to an activity.

The following table provides examples of what we might consider to be regulators.

Regulator	Regulator information	Regulator website
Cairngorms National Park Authority	Ensures that the unique aspects of the Cairngorms National Park - the natural environment, the cultural heritage, the local communities - are cared for, sustained and enhanced	http://cairngorms.co.uk/park-authority/
Civilian Aviation Authority	independent specialist aviation regulator and provider of air traffic services, and regulates bodies including air operators and aerodromes.	http://www.caa.co.uk/default.aspx?catid=2345
Food Standards Scotland	Ensures that information and advice on food safety and standards, nutrition and labelling is independent, consistent, evidence-based and consumer-focused. Primary concern is consumer protection – making sure that food is safe to eat, ensuring consumers know what they are eating and improving nutrition. Vision is to deliver a food and drink environment in Scotland that benefits, protects and is trusted by consumers.	http://www.foodstandards.gov.scot/about-us
Health and Safety Executive	Provides a regulatory framework for work place health and safety in Great Britain.	http://www.hse.gov.uk/aboutus/index.htm
Historic Scotland	Safeguards the nation’s historic environment and promotes its understanding and enjoyment	http://www.historic-scotland.gov.uk/index/about.htm

Local Authority - General licensing	Responsible for a range of licensing regimes as well as alcohol and gambling, including the licensing of taxis, house-to-house collections, sex establishments, Sunday trading, charity collections, scrap metal dealers and pavement cafes.	Refer to website of relevant local authority
Local Authority - Housing	Responsible for enforcing regulations concerning housing including provisions for area improvement, responsibilities of landlords, compulsory purchase, housing in multiple occupation and licensing of housing	Refer to website of relevant local authority
Local Authority - Planning	Responsible for regulating in relation to planning controls.	Refer to website of relevant local authority
Local Authority - Road traffic	Some responsibility for regulating the control of overloaded and inappropriately loaded vehicles.	Refer to website of relevant local authority
Loch Lomond and Trossachs National Park	Ensures the natural heritage, land and water resources are sustainably managed and protected. Establish and promote the National Park as one of Scotland's premiere sustainable tourism destinations. Enable and promote sustainable development that supports and enhances local distinctiveness and sense of place. Encourage enterprise and innovation and improve the quality of life for the local communities.	http://www.lochlomond-trossachs.org/looking-after/what-we-do/menu-id-433.html
Marine Scotland	Manages Scotland's seas for prosperity and environmental sustainability, working closely with key delivery partners Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).	http://www.gov.scot/About/People/Directorates/marinescotland
Ofcom (communications providers)	Is the communications regulator. We regulate the TV and radio sectors, fixed line telecoms, mobiles, postal services, plus the airwaves over which wireless devices operate.	http://www.ofcom.org.uk/about/
Ofgem (gas and electricity providers)	Protects the interests of existing and future electricity and gas consumers.	https://www.ofgem.gov.uk/about-us/who-we-are
Office for Nuclear Regulation	Responsible for regulation of nuclear safety and security across the UK	http://www.onr.org.uk/about.htm
Office of Rail and Road	Is the safety and economic regulator for Britain's railways. Ensures that the network operates safely, reliably and provides value for taxpayers and customers.	http://orr.gov.uk/about-orr
Scottish Environment Protection Agency	Protects the environment and human health, including environmental regulation, monitoring and reporting on the state of the environment, and resolving environmental harms.	http://www.sepa.org.uk/about-us/

Scottish Housing Regulator	Regulate to protect the interests of tenants, homeless people and others who use social landlords' services	https://www.scottishhousingregulator.gov.uk/
Scottish Natural Heritage	Promotes care for and improvement of the natural heritage; help people enjoy the natural heritage responsibly; enables greater understanding and awareness of the natural heritage; and promote its sustainable use, now and for future generations.	http://www.snh.gov.uk/about-snh/
Scottish Police Authority	Responsible for maintaining policing, promoting policing principles and continuous improvement of policing, and to hold the Chief Constable to account	http://www.spa.police.uk/about-us/
Scottish Water	Provision of safe drinking water and removal of waste water	http://www.scottishwater.co.uk/about-us
Transport Scotland	National transport agency for Scotland, delivering the Scottish Government's vision for transport.	http://www.transportscotland.gov.uk/

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? Yes No

If not, please explain

Are there any persons, bodies or office-holders that you believe should be included in the definition of regulator, but are not listed above? If so, please give details.

Are there any persons, bodies or office-holders that you believe should not be included in the definition of regulator? If so, please give details.

6. Section 97N(1)&(3): Prohibitions on sale or transfer of land; suspension of rights

Background

6.1 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.

6.2 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).

6.3 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

6.4 We have considered what may be included in regulations made under sections 97N(1) and 97N(3), as set out below:

Section 97N(1) and 97N(3) – Date of prohibition or suspension of rights

Date prohibition or suspension of right applied

6.5 Following receipt of a valid application, we consider 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 land⁵, 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? Yes No

If not, please explain

⁵ A creditor in a standard security with the right to sell land has the meaning given in section 97Z(1) of the 2003 Act, that is, a creditor who has a right under section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970 (the “1970 Act”), or a warrant granted under section 24(1) of the 1970 Act.

Date prohibition or suspension of rights lifted

6.6 We consider 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? Yes No

If not, please explain

Section 97N(1) and 97N(3) – Persons subject to prohibition

6.7 We consider 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 proposals? Yes No

If not, please explain

Section 97N(1) – Prohibition of transfer of land

6.8 The following sets out what will be prohibited:

- We consider that the landowner and creditor in a standard security will be prohibited only from completing the transfer of land.

Section 97N(2) regulations made under section 97N(1) – Transfers or dealings not subject to these regulations

6.9 We consider 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.

We also consider 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) below.

Question 8

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

Yes No

If not, please explain

Are there any that you believe should be added? If so, please give details.

Are there any that you believe should be removed? If so, please give details.

Section 97N(3) – Suspension of rights over the land

6.10 We consider that the following rights, if they were to be exercised, may prevent a Part 3A application from being properly considered. Therefore we are 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

The above section sets out proposals surrounding the rights which are to be suspended when a valid application is made under Part 3A.

Do you agree with these proposals? Yes No

If not, please explain

Are there any other rights that you believe should be suspended? If so, please give details.

Are there any of these rights that you believe should not be suspended? If so, please give details.

7. Section 97J(7) – Provision for or in connection with enabling a Part 3A community body to apply for the cost of ballot expenses to be reimbursed

Background

7.1 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.

7.2 It was not considered appropriate for Ministers to meet the cost of the ballot at the outset of the Part 3A community right to buy process, however we 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 below outline the circumstances in which Part 3A community bodies should be able to seek reimbursement of the ballot costs.

Proposals

7.3 We are 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? Yes No

If not, please explain

Are there any other circumstances under which you believe a community body should be able to apply for reimbursement? If so, please give details.

7.4 We consider 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? Yes No

If not, please explain

8. Section 97T(4) – entitlement to compensation

Background

8.1 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).

8.2 Those circumstances set out in section 97T(1) are that the loss or expense has been incurred as a result of:

- (i) the person complying with the requirements of Part 3A following receipt of an application made under Part 3A of the 2003 Act by a community body,
- (ii) a Part 3A community body withdrawing its application or failing to complete the purchase of the land after confirming its intention to complete the purchase,
- or
- (iii) the failure of the Part 3A community body which made the application to complete the purchase of the land.

8.3 Where the parties to a compensation application are unable to agree whether compensation is payable, or the amount of compensation payable, either party may refer the question to the Lands Tribunal for Scotland.

Proposals

8.4 We consider 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? Yes No

If not, please explain



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Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

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