



# Community Empowerment (Scotland) Act 2015

2015 asp 6

## PART 4 **S**

### COMMUNITY RIGHTS TO BUY LAND

#### *Abandoned, neglected and detrimental land*

#### 74 **Abandoned, neglected and detrimental land** **S**

After section 97A of the 2003 Act, insert—

#### “PART 3A **S**

### COMMUNITY RIGHT TO BUY ABANDONED, NEGLECTED OR DETRIMENTAL LAND

#### **97B Meaning of “land”**

In this Part, “land” includes—

- (a) bridges and other structures built on or over land,
- (b) inland waters (within the meaning of section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003),
- (c) canals, and
- (d) the foreshore, that is to say, the land between the high and low water marks of ordinary spring tides.

#### **97C Right to buy eligible land**

- (1) The land which may be bought by a Part 3A community body under this Part is eligible land.
- (2) Land is eligible for the purposes of this Part if in the opinion of Ministers—

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- (a) it is wholly or mainly abandoned or neglected, or
  - (b) the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community.
- (3) In subsection (2)(b)—
- (a) “harm”—
    - (i) includes harm the environmental effects of which have an adverse effect on the lives of persons comprising the relevant community mentioned in that subsection,
    - (ii) does not include harm which, in the opinion of Ministers, is negligible,
  - (b) “relevant community”, in relation to a Part 3A community body making an application under section 97G in relation to the land, means—
    - (i) the community defined as mentioned in subsection (9) of section 97D to which the Part 3A community body relates (reading that subsection as if paragraph (b)(ii) were omitted), or
    - (ii) where the Part 3A community body is a body mentioned in section 97D(1)(b), the community to which the body relates.
- (4) In determining whether land is eligible for the purposes of this Part, Ministers must have regard to prescribed matters.
- (5) Eligible land does not include—
- (a) 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 a tenancy,
  - (b) such land pertaining to land of the type mentioned in paragraph (a) as may be prescribed,
  - (c) eligible croft land (as defined in section 68(2)),
  - (d) any croft occupied or worked by its owner or a member of its owner's family,
  - (e) land which is owned or occupied by the Crown by virtue of its having vested as *bona vacantia* in the Crown, or its having fallen to the Crown as *ultimus haeres*,
  - (f) land of such other descriptions or classes as may be prescribed.
- (6) Ministers may prescribe—
- (a) descriptions or classes of building or structure which are, or are to be treated as, a home for the purposes of paragraph (a) of subsection (5),
  - (b) descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of that paragraph.
- (7) In subsection (5)(d), the reference to a croft being occupied includes—
- (a) a reference to its being occupied otherwise than permanently, and
  - (b) a reference to its being occupied by way of the occupation by its owner of any dwelling-house on or pertaining to it.

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### 97D Part 3A community bodies

- (1) A Part 3A community body is, subject to subsection (6)—
  - (a) a body falling within subsection (2), (3) or (4), or
  - (b) a body of such other description as may be prescribed which complies with prescribed requirements.
- (2) A body falls within this subsection if it is a company limited by guarantee the articles of association of which include the following—
  - (a) a definition of the community to which the company relates,
  - (b) provision enabling the company to exercise the right to buy land under this Part,
  - (c) provision that the company must have not fewer than 10 members,
  - (d) provision that at least three quarters of the members of the company are members of the community,
  - (e) provision whereby the members of the company who consist of members of the community have control of the company,
  - (f) provision ensuring proper arrangements for the financial management of the company,
  - (g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community, and
  - (h) provision that, on the winding up of the company and after satisfaction of its liabilities, its property (including any land acquired by it under this Part) passes—
    - (i) to such other community body or crofting community body as may be approved by Ministers, or
    - (ii) if no other community body or crofting community body is so approved, to Ministers or to such charity as Ministers may direct.
- (3) A body falls within this subsection if it is a Scottish charitable incorporated organisation (a “SCIO”) the constitution of which includes the following—
  - (a) a definition of the community to which the SCIO relates,
  - (b) provision enabling the SCIO to exercise the right to buy land under this Part,
  - (c) provision that the SCIO must have not fewer than 10 members,
  - (d) provision that at least three quarters of the members of the SCIO are members of the community,
  - (e) provision under which the members of the SCIO who consist of members of the community have control of the SCIO,
  - (f) provision ensuring proper arrangements for the financial management of the SCIO,
  - (g) provision that, on the request of any person for a copy of the minutes of a meeting of the SCIO, the SCIO must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
  - (h) provision that, where a request of the type mentioned in paragraph (g) is made, the SCIO—
    - (i) may withhold information contained in the minutes, and

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- (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
  - (i) provision that any surplus funds or assets of the SCIO are to be applied for the benefit of the community.
- (4) A body falls within this subsection if it is a community benefit society the registered rules of which include the following—
- (a) a definition of the community to which the society relates,
  - (b) provision enabling the society to exercise the right to buy land under this Part,
  - (c) provision that the society must have not fewer than 10 members,
  - (d) provision that at least three quarters of the members of the society are members of the community,
  - (e) provision under which the members of the society who consist of members of the community have control of the society,
  - (f) provision ensuring proper arrangements for the financial management of the society,
  - (g) provision that, on the request of any person for a copy of the minutes of a meeting of the society, the society must, if the request is reasonable, give the person within 28 days of the request a copy of those minutes,
  - (h) provision that, where a request of the type mentioned in paragraph (g) is made, the society—
    - (i) may withhold information contained in the minutes, and
    - (ii) if it does so, must inform the person requesting a copy of the minutes of its reasons for doing so, and
  - (i) provision that any surplus funds or assets of the society are to be applied for the benefit of the community.
- (5) Ministers may, if they think it in the public interest to do so, disapply the requirement specified in subsection (2)(c), (3)(c) or (4)(c) in relation to any body they may specify.
- (6) A body is not a Part 3A community body unless Ministers have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.
- (7) Ministers may by regulations from time to time amend subsections (2), (3) and (4).
- (8) If provision is made under subsection (1)(b), Ministers may by regulations make such amendment of section 97E(1) in consequence of that provision as they consider necessary or expedient.
- (9) A community—
- (a) is defined for the purposes of subsection (2)(a), (3)(a) and (4)(a) by reference to a postcode unit or postcode units or a prescribed type of area (or both such unit and type of area), and
  - (b) comprises the persons from time to time—
    - (i) resident in that postcode unit or in one of those postcode units or in that prescribed type of area, and

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- (ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units or that prescribed type of area (or part of it or them).
- (10) In subsection (9), “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.
- (11) The articles of association of a company which is a Part 3A community body may, notwithstanding the generality of paragraph (h) of subsection (2), provide that its property may, in the circumstances mentioned in that paragraph, pass to another person only if that person is a charity.
- (12) In this section—
  - “charity” means a body entered in the Scottish Charity Register,
  - “community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act,
  - “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006,
  - “registered rules” has the meaning given by section 149 of that Act of 2014 (as that meaning applies in relation to community benefit societies),
  - “Scottish charitable incorporated organisation” has the meaning given by section 49 of the Charities and Trustee Investment (Scotland) Act 2005.

### **97E Provisions supplementary to section 97D**

- (1) A Part 3A community body which has bought land under this Part may not, for as long as the land or any part of it remains in its ownership, modify its memorandum, articles of association, constitution or registered rules (as defined in section 97D(12)) without Ministers' consent in writing.
- (2) If Ministers are satisfied that a Part 3A community body which has, under this Part, bought land would, had it not so bought that land, no longer be entitled to do so, they may acquire the land compulsorily.
- (3) Subsection (2) does not apply if the Part 3A community body would no longer be entitled to buy the land because the land is not eligible for the purposes of this Part.
- (4) Where the power conferred by subsection (2) is (or is to be) exercised in relation to land, Ministers may make an order relating to, or to matters connected with, the acquisition of the land.
- (5) An order under subsection (4) may—
  - (a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made under that subsection,
  - (b) make such modifications of enactments as appear to Ministers to be necessary or expedient in consequence of any provision of the order or otherwise in connection with the order.

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### **97F Register of Community Interests in Abandoned, Neglected or Detrimental Land**

- (1) The Keeper must set up and keep a register, to be known as the Register of Community Interests in Abandoned, Neglected or Detrimental Land (the “Part 3A Register”).
- (2) The Part 3A Register must be set up and kept so as to contain, in a manner and form convenient for public inspection, the following information and documents relating to each application to exercise the right to buy under this Part registered in it—
  - (a) where the Part 3A community body which has submitted the application is constituted by a company limited by guarantee, the name and address of the registered office of the company,
  - (b) where the Part 3A community body which has submitted the application is constituted by a Scottish charitable incorporated organisation within the meaning given in section 97D(12) (a “SCIO”), the name and address of the principal office of the SCIO,
  - (c) where the Part 3A community body which has submitted the application is constituted by a community benefit society as defined in section 97D(12), the name and address of the registered office of the society,
  - (d) a copy of the application to exercise the right to buy under this Part,
  - (e) a copy of any notification given under section 97K(4)(b),
  - (f) a copy of the notice given under section 97M(1),
  - (g) a copy of any notice under section 97P(1),
  - (h) a copy of any notice under section 97P(2)(a),
  - (i) a copy of any notice under section 97P(2)(b),
  - (j) a copy of any acknowledgement sent under section 97P(3),
  - (k) such other information as Ministers consider appropriate.
- (3) Subject to subsection (4), any person who, under this Part, provides a document or other information, or makes a decision, which or a copy of which is to be registered in the Part 3A Register must, as soon as reasonably practicable after providing the document or other information or, as the case may be, making the decision, give it or a copy of it to the Keeper for the purpose of allowing it to be so registered.
- (4) If the Part 3A community body registering an application requires that any such information or document relating to that application and falling within subsection (5) as is specified in the requirement be withheld from public inspection, that information or document is to be kept by or on behalf of Ministers separately from and not entered in the Register.
- (5) Information or a document falls within this subsection if it relates to arrangements for the raising or expenditure of money to enable the land to which the application relates to be put to a particular use.
- (6) Nothing in subsection (4) or (5) obliges an applicant Part 3A community body, or empowers Ministers to require such a body, to submit to Ministers any information or document within subsection (5).

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- (7) Subsection (8) applies where—
- (a) a Part 3A community body changes its name,
  - (b) a Part 3A community body which is constituted by a company limited by guarantee or by a community benefit society changes the address of its registered office, or
  - (c) a Part 3A community body which is constituted by a SCIO changes the address of its principal office.
- (8) The Part 3A community body must, as soon as reasonably practicable after the change is made, notify the Keeper of the change.
- (9) Ministers may by regulations modify—
- (a) paragraphs (a) to (j) of subsection (2),
  - (b) subsection (4),
  - (c) subsection (5).
- (10) The Keeper must ensure—
- (a) that the Part 3A Register is, at all reasonable times, available for public inspection free of charge,
  - (b) that members of the public are given facilities for getting copies of entries in the Part 3A Register on payment of such charges as may be prescribed, and
  - (c) that any person requesting it is, on payment of such a charge, supplied with an extract entry certified to be a true copy of the original.
- (11) An extract so certified is sufficient evidence of the original.
- (12) In this Part, “the Keeper” means—
- (a) the Keeper of the Registers of Scotland, or
  - (b) such other person as Ministers may appoint to carry out the Keeper's functions under this Part.
- (13) Different persons may be so appointed for different purposes.

### **97G Right to buy: application for consent**

- (1) The right to buy under this Part may be exercised only by a Part 3A community body.
- (2) That right may be so exercised only with the consent of Ministers given on the written application of the Part 3A community body.
- (3) That right may be exercised in relation to more than one holding of land but in order so to exercise the right an application must be made in respect of each such holding and applications so made may be differently disposed of.
- (4) In subsection (3), a “holding” of land is land in the ownership of one person or in common or joint ownership.
- (5) An application under this section—
  - (a) must be made in the prescribed form,
  - (b) must specify—
    - (i) the owner of the land,

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- (ii) any tenant of the land, and
  - (iii) any creditor in a standard security over the land or any part of it, and
  - (c) must include or be accompanied by information of the prescribed kind including information (provided, where appropriate, by or by reference to maps or drawings) about the matters mentioned in subsection (6).
- (6) The matters are—
- (a) the reasons the Part 3A community body considers that its proposals for the land are—
    - (i) in the public interest, and
    - (ii) compatible with furthering the achievement of sustainable development in relation to the land,
  - (b) the reasons the Part 3A community body considers that the land is—
    - (i) wholly or mainly abandoned or neglected, or
    - (ii) being used or managed in such a way as to result in or cause harm as mentioned in section 97C(2)(b),
  - (c) the location and boundaries of the land in respect of which the right to buy is sought to be exercised,
  - (d) all rights and interests in the land known to the Part 3A community body,
  - (e) the proposed use, development and management of the land, and
  - (f) where the Part 3A community body has made a request to a relevant regulator as mentioned in section 97H(5)(b) (“relevant regulator” being construed in accordance with section 97H(6)), information about the request.
- (7) A Part 3A community body applying under this section must, at the same time as it applies—
- (a) send a copy of its application and the accompanying information to the owner of the land to which the application relates, and
  - (b) where there is a standard security in relation to the land or any part of it, send a copy of the application and the accompanying information to the creditor who holds the standard security and invite the creditor—
    - (i) to notify the Part 3A community body and Ministers, within 60 days of receipt of the invitation, if any of the circumstances set out in subsection (8) has arisen (or arises within 60 days of receipt of the invitation), and
    - (ii) if such notice is given, to provide Ministers, within that time, with the creditor's views in writing on the application.
- (8) Those circumstances are that—
- (a) a calling-up notice has been served by the creditor under section 19 of the Conveyancing and Feudal Reform (Scotland) Act 1970 in relation to the land which the Part 3A community body is seeking to exercise its right to buy or any part of the land and that notice has not been complied with,
  - (b) a notice of default served by the creditor under section 21 of that Act in relation to the land or any part of the land has not been complied with and the person on whom the notice was served has not, within the



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- period specified in section 22 of that Act, objected to the notice by way of application to the court,
- (c) where that person has so objected, the court has upheld or varied the notice of default,
  - (d) the court has granted the creditor a warrant under section 24 of that Act in relation to the land or any part of the land.
- (9) On receipt of an application under this section, Ministers must—
- (a) invite—
    - (i) the owner of the land,
    - (ii) any tenant of the land,
    - (iii) any creditor in a standard security over the land or any part of it, and
    - (iv) any other person whom Ministers consider to have an interest in the application,to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application,
  - (b) take reasonable steps to invite the owners of all land contiguous to the land to which the application relates to send them, so as to be received not later than 60 days after the sending of the invitation, views in writing on the application, and
  - (c) send copies of invitations given under paragraphs (a) and (b) to the Part 3A community body.
- (10) An invitation given under subsection (9)(a)(i) must also invite the owner to give Ministers information about—
- (a) whether the owner considers that it would be in the public interest for Ministers to consent to the application and, if not, the reasons the owner considers that it would not be in the public interest for such consent to be given,
  - (b) whether the owner's continuing to own the land would be compatible with furthering the achievement of sustainable development in relation to the land,
  - (c) whether the owner considers the land to be wholly or mainly neglected or abandoned or, as the case may be, to be used or managed in such a way as to result in or cause harm as mentioned in section 97C(2)(b) and the reasons for the owner's view,
  - (d) any proposals that the owner has for the land,
  - (e) any rights or interests in the land of which the owner is aware that are not mentioned in the application, and
  - (f) any other matter that the owner considers is relevant to the application.
- (11) Ministers must, as soon as practicable after receiving an application, give public notice of it and of the date by which, under subsection (9)(a), views are to be received by them and, in that notice, invite persons to send to Ministers, so as to be received by them not later than 60 days after the publication of the notice, views in writing on the application.
- (12) That public notice is to be given by advertisement in such manner as may be prescribed.
- (13) Ministers must—

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- (a) send copies of any views they receive under this section to the Part 3A community body, and
  - (b) invite it to send them, so as to be received by them not later than 60 days after the sending of that invitation, its responses to these views.
- (14) Ministers must, when considering whether to consent to an application under this section, have regard to all views on it and responses to the views which they have received in answer to invitations under this section.
- (15) Ministers must decline to consider an application which—
- (a) does not comply with the requirements of or imposed under this section,
  - (b) is otherwise incomplete, or
  - (c) otherwise indicates that it is one which Ministers would be bound to reject;
- and Ministers are not required to comply with subsections (9) to (14) in relation to such an application.
- (16) Ministers must not reach a decision on an application before—
- (a) the date which is 60 days after the last date on which the Part 3A community body may provide Ministers with a response to the invitation given under subsection (13), or
  - (b) if by that date the Lands Tribunal has not advised Ministers of its finding on any question referred to it under section 97X in relation to the application, the date on which the Lands Tribunal provides Ministers with that finding.
- (17) A Part 3A community body may require Ministers to treat as confidential any information or document relating to arrangements for the raising or expenditure of money to enable the land to be put to a particular use, being information or a document made available to Ministers for the purposes of this section.

### **97H Criteria for consent**

- (1) Ministers must not consent to an application made under section 97G unless they are satisfied—
- (a) that the land to which the application relates is eligible land,
  - (b) that the exercise by the Part 3A community body of the right to buy under this Part is—
    - (i) in the public interest, and
    - (ii) compatible with furthering the achievement of sustainable development in relation to the land,
  - (c) that the achievement of sustainable development in relation to the land would be unlikely to be furthered by the owner of the land continuing to be its owner,
  - (d) that the owner of the land is accurately identified in the application,
  - (e) that any creditor in a standard security over the land or any part of it with a right to sell the land or any part of it is accurately identified in the application,
  - (f) that the owner is not—
    - (i) prevented from selling the land, or

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- (ii) subject to any enforceable personal obligation (other than an obligation arising by virtue of any right suspended by regulations under section 97N(3)) to sell the land otherwise than to the Part 3A community body,
  - (g) that the Part 3A community body complies with the provisions of section 97D,
  - (h) that—
    - (i) a significant number of the members of the community to which the application relates have a connection with the land,
    - (ii) the land is sufficiently near to land with which those members of the community have a connection,
    - (iii) where the Part 3A community body is a body mentioned in section 97D(1)(a), the land is in or sufficiently near to the area of the community by reference to which the community is defined as mentioned in section 97D(9)(a), or
    - (iv) where the Part 3A community body is a body mentioned in section 97D(1)(b), the land is in or sufficiently near to the area of the community to which the body relates,
  - (i) that the community have approved the proposal to exercise the right to buy, and
  - (j) that, otherwise than by virtue of this Part, the Part 3A community body has tried and failed to buy the land.
- (2) Subsection (1) is subject to subsections (3) to (7).
- (3) Subsections (4) to (7) apply in relation to an application made under section 97G that relates to land the use or management of which is such that it results in or causes harm to the environmental wellbeing of a relevant community (as defined in section 97C(3)).
- (4) In deciding whether to consent to the application, Ministers are not required to be satisfied as to the matter mentioned in subsection (1)(c) in relation to the land.
- (5) Ministers must not consent to the application unless they are satisfied (in addition to the matters specified in subsection (1) as read with subsection (4))—
- (a) that the exercise by the Part 3A community body of the right to buy under this Part is compatible with removing, or substantially removing, the harm to the environmental wellbeing of the relevant community,
  - (b) that the Part 3A community body has, before the application is submitted, made a request to—
    - (i) a relevant regulator (if any), or
    - (ii) where there is more than one relevant regulator, to all such regulators,
 to take action in relation to the land in exercise of its (or their) relevant regulatory functions that could, or might reasonably be expected to, remedy or mitigate the harm, and
  - (c) (regardless of whether or not a relevant regulator is taking, or has taken, action in exercise of its relevant regulatory functions in relation to the land) that the harm is unlikely to be removed, or substantially removed, by the owner of the land continuing to be its owner.

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- (6) For the purposes of subsection (5)—
- (a) “regulator” means—
    - (i) such person, body or office-holder as may be prescribed, or
    - (ii) a person, body or office-holder of such description as may be prescribed,
  - (b) a regulator is “relevant” if, in the opinion of Ministers, the regulator is relevant having regard to the harm to the environmental wellbeing of the relevant community,
  - (c) action taken by a relevant regulator in exercise of its relevant functions includes action to secure compliance with or enforce a regulatory requirement,
  - (d) “regulatory functions” has the meaning given by section 1(5) (as read with section 1(6)) of the Regulatory Reform (Scotland) Act 2014, but as if the words “but does not include any such functions exercisable by a planning authority” in section 1(5) were omitted,
  - (e) a regulatory function is “relevant” if, in the opinion of Ministers, the function is relevant having regard to the harm to the environmental wellbeing of the relevant community.
- (7) In subsection (6)(c), “regulatory requirement” has the meaning given by section 1(5) of the Regulatory Reform (Scotland) Act 2014, but as if the references to “regulator” and “regulatory functions” in paragraph (b) of that definition were references respectively to “regulator” and “regulatory functions” within the meaning given by subsection (6) of this section.
- (8) References in subsection (1) to the community are, in relation to a Part 3A community body, references to—
- (a) where the body is a body mentioned in section 97D(1)(a), the community defined in relation to the body under section 97D(2)(a), (3)(a) or (4)(a), or
  - (b) where the body is a body mentioned in section 97D(1)(b), the community to which the body relates.

### **97J Ballot to indicate approval for purposes of section 97H**

- (1) The community, defined in pursuance of section 97D in relation to a Part 3A community body which has applied to buy land, are to be taken for the purposes of section 97H(1)(i) as having approved a proposal to buy if—
- (a) a ballot of the members of the community so defined has, during the period of six months which immediately preceded the date on which the application was made, been conducted by the Part 3A community body on the question whether the Part 3A community body should buy the land,
  - (b) in the ballot—
    - (i) at least half of the members of the community so defined have voted, or
    - (ii) fewer than half of the members of the community so defined have voted but the proportion which voted is sufficient to justify the Part 3A community body's proceeding to buy the land, and

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- (c) the majority of those voting have voted in favour of the proposition that the Part 3A community body buy the land.
- (2) The ballot is to be conducted as prescribed.
- (3) The provisions prescribed must in particular include provision for—
  - (a) the ascertainment and publication of—
    - (i) the number of persons eligible to vote in the ballot,
    - (ii) the number who did vote, and
    - (iii) the numbers of valid votes respectively cast for and against the proposition mentioned in subsection (1)(c), and
  - (b) the form and manner in which the result of the ballot is to be published.
- (4) The Part 3A community body which conducts a ballot must, within 21 days of the ballot (or, if its application under section 97G is made before the expiry of that period, together with the application), and in the prescribed form of return, notify Ministers of—
  - (a) the result,
  - (b) the number of persons eligible to vote,
  - (c) the number of persons who voted, and
  - (d) the number of persons who voted in favour of the proposition mentioned in subsection (1)(c).
- (5) Ministers may require the Part 3A community body—
  - (a) to provide such information relating to the ballot as they think fit, and
  - (b) to provide such information relating to any consultation with those eligible to vote in the ballot undertaken during the period in which the ballot was carried out as Ministers think fit.
- (6) Subject to subsection (7), the expense of conducting a ballot under this section is to be met by the Part 3A community body.
- (7) Ministers may 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.
- (8) Regulations under subsection (7) may in particular make provision in relation to—
  - (a) the circumstances in which a Part 3A community body may make an application by virtue of that subsection,
  - (b) the method to be applied by Ministers in calculating the expense of conducting the ballot,
  - (c) the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant,
  - (d) the procedure to be followed in connection with the making of—
    - (i) an application to Ministers,
    - (ii) an appeal against a decision made by Ministers in respect of an application,
  - (e) persons who may consider such an appeal,
  - (f) the powers of such persons.

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*Changes to legislation: There are currently no known outstanding effects for the Community Empowerment (Scotland) Act 2015, Cross Heading: Abandoned, neglected and detrimental land. (See end of Document for details)*

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- (9) If the ballot is not conducted as prescribed, the Part 3A community body's right to buy the land to which the body's application relates is, so far as proceeding on that application, extinguished.

**97K Right to buy same land exercisable by only one Part 3A community body**

- (1) Only one Part 3A community body may exercise the right under this Part to buy the same land.
- (2) Where two or more such bodies have applied to buy the same land, it is for Ministers to decide which application is to proceed.
- (3) Ministers may not make such a decision unless they have had regard to all views on each of the applications, and responses to the views, which they have received in answer to invitations under section 97G.
- (4) On Ministers so deciding—
- (a) the other body's right to buy the land which is the subject of the body's application is, so far as proceeding on that application, extinguished, and
  - (b) they must notify the bodies and each person invited, under section 97G(9)(a), to send them views on the application of that fact.

**97L Consent conditions**

Ministers may make their consent to an application made under section 97G subject to conditions.

**97M Notification of Ministers' decision on application**

- (1) Ministers must give written notice, in prescribed form, of their decision on an application made under section 97G, and their reasons for it, to—
- (a) the applicant Part 3A community body,
  - (b) the owner of the land to which the application relates,
  - (c) every other person who was invited, under section 97G(9)(a), to send them views on the application, and
  - (d) the Keeper.
- (2) The form of notice is to be prescribed so as to secure that the notice includes a full description of—
- (a) the land to which the application relates (provided, where appropriate, by or by reference to maps and drawings), and
  - (b) where their decision is to consent to the application, any conditions imposed under section 97L.
- (3) The notice given under subsection (1) must—
- (a) contain information about the consequences of the decision notified and of the rights of appeal against it given by this Part, and
  - (b) state the date on which consent is given or refused.

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### **97N Effect of Ministers' decision on right to buy**

- (1) Ministers may by regulations make provision for or in connection with prohibiting, during such period as may be specified in the regulations, persons so specified from transferring or otherwise dealing with land in respect of which a Part 3A community body has made an application under section 97G.
- (2) Regulations under subsection (1) may in particular include provision—
  - (a) specifying transfers or dealings which are not prohibited by the regulations,
  - (b) requiring or enabling such persons as may be specified in the regulations, in such circumstances as may be so specified, to register in the Register of Community Rights in Abandoned, Neglected or Detrimental Land notices as may be so specified,
  - (c) requiring, in such circumstances as may be specified in the regulations, such information as may be so specified to be incorporated into deeds relating to the land as may be so specified.
- (3) Ministers may by regulations make provision for or in connection with suspending, during such period as may be specified in the regulations, such rights in or over land in respect of which a Part 3A community body has made an application under section 97G as may be so specified.
- (4) Regulations under subsection (3) may in particular include provision specifying—
  - (a) rights to which the regulations do not apply,
  - (b) rights to which the regulations do not apply in such circumstances as may be specified in the regulations.
- (5) Nothing in this Part—
  - (a) affects the operation of an inhibition on the sale of the land,
  - (b) prevents an action of adjudication from proceeding, or
  - (c) affects the commencement, execution or operation of any other diligence.

### **97P Confirmation of intention to proceed with purchase and withdrawal**

- (1) A Part 3A community body's right to buy land under this Act is exercisable only if, within 21 days of the date of notification under section 97S(12), it sends notice in writing confirming its intention to proceed to buy the land to—
  - (a) Ministers, and
  - (b) the owner of the land.
- (2) A Part 3A community body may, at any time after—
  - (a) making an application under section 97G, withdraw the application, or
  - (b) confirming its intention to proceed under subsection (1), withdraw that confirmation,by notice in writing to that effect sent to Ministers.

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- (3) Ministers must, within 7 days of receipt of notice under subsection (1) or (2), acknowledge receipt and send a copy of that acknowledgement to the owner of the land.

### **97Q Completion of purchase**

- (1) It is for the Part 3A community body to secure the expeditious exercise of its right to buy and, in particular—
- (a) to prepare the documents necessary to—
    - (i) effect the transfer to it of the land, and
    - (ii) impose any conditions (including any real burdens or servitudes) which Ministers, under section 97L, require to be imposed upon the title to land, and
  - (b) in so doing, to ensure—
    - (i) that the land in the application to which Ministers have consented is the same as that to be transferred, and
    - (ii) that the transfer is to be effected in accordance with any other conditions imposed by Ministers under section 97L.
- (2) Where the Part 3A community body is unable to fulfil the duty imposed by subsection (1)(b) because the land or part of the land in respect of which Ministers' consent was given is not owned by the person named as its owner in the application made under section 97G, it must refer that matter to Ministers.
- (3) On a reference under subsection (2), Ministers must direct that the Part 3A community body's right to buy the land is, so far as proceeding on that application, extinguished.
- (4) The owner of the land being bought is obliged—
- (a) to make available to the Part 3A community body such deeds and other documents as are sufficient to enable the body to proceed to complete its title to the land, and
  - (b) to transfer title accordingly.
- (5) If, within 6 weeks of the date on which Ministers consent to an application to buy land, the owner of the land refuses or fails to make those deeds and other documents available, or they cannot be found, the Lands Tribunal may, on the application of the Part 3A community body, order the owner or any other person appearing to the Lands Tribunal to have those deeds and documents to produce them.
- (6) If the owner of the land refuses or fails to effect such sufficient transfer as is mentioned in subsection (4), the Lands Tribunal may, on the application of the Part 3A community body, authorise its clerk to adjust, execute and deliver such deeds or other documents as will complete such transfer to the like force and effect as if done by the owner or person entitled.

### **97R Completion of transfer**

- (1) The consideration for the transfer of the land is its value as assessed under section 97S.



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- (2) Subject to subsections (3) and (4), that consideration must be paid not later than the “final settlement date”, being the date on which expires a 6 month period beginning with the date (the “consent date”) when Ministers consented to the application made under section 97G to buy the land.
- (3) Where—
  - (a) the Part 3A community body and the owner so agree, the consideration may be paid on a date later than the final settlement date,
  - (b) the assessment of the valuation of the land has not been completed by a date 4 months after the consent date, the consideration must be paid not later than 2 months after the date when that assessment is completed,
  - (c) that valuation is the subject of an appeal which has not been determined within 4 months of the consent date, the consideration must be paid not later than 2 months after the date of that determination.
- (4) If, on the date the consideration is to be paid, the owner is not able to effect the grant of a good and marketable title to the Part 3A community body—
  - (a) the consideration, or
  - (b) if, for any reason, the consideration has not been ascertained, such sum as may be fixed by the valuer appointed under section 97S as a fair estimate of what the consideration might be,must be consigned into the Lands Tribunal until that title is granted or the Part 3A community body gives notice to the Tribunal of its decision not to proceed to complete the transaction.
- (5) Except where subsection (4) applies, if the consideration remains unpaid after the date not later than which it is to be paid, the Part 3A community body's application made under section 97G in relation to the land is to be treated as withdrawn.
- (6) Any heritable security which burdened the land immediately before title is granted to the Part 3A community body in pursuance of this section ceases to do so on the recording of that title in the Register of Sasines or registration in the Land Register of Scotland of the body's interest in the land.
- (7) Where such a security also burdens land other than the land in respect of which title is granted to the Part 3A community body, the security does not, by virtue of subsection (6), cease to burden that other land.
- (8) Unless the creditors in right of any such security otherwise agree, the Part 3A community body must pay to them according to their respective rights and preferences any sum which would, but for this subsection, be paid to the owner by the Part 3A community body as consideration for the land.
- (9) Any sum paid by a Part 3A community body under subsection (8) must be deducted from the sum which the body is to pay to the owner as consideration for the land.

#### **97S Assessment of value of land etc.**

- (1) Where Ministers consent to an application made under section 97G, they must, subject to subsection (2), within 7 days of doing so appoint a valuer, being a person who appears to Ministers to be suitably qualified, independent and to

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have knowledge and experience of valuing land of a kind which is similar to the land being bought, to assess the value of the land to which the application relates.

- (2) The validity of anything done under this section is not affected by any failure by Ministers to comply with the time limit specified in subsection (1).
- (3) In assessing the value of land in pursuance of an appointment under subsection (1), a valuer—
  - (a) does not act on behalf of the owner of the land or of the Part 3A community body which is exercising its right to buy the land under this Part, and
  - (b) is to act as an expert and not as an arbiter.
- (4) The value to be assessed is the market value of the land as at the date when Ministers consented to the application made under section 97G relating to the land.
- (5) The “market value” of land is the aggregate of—
  - (a) the value it would have on the open market as between a seller and a buyer both of whom are, as respects the transaction, willing,
  - (b) any depreciation in the value of other land or interests belonging to the seller which may result from the transfer of land, including depreciation caused by division of the land by the transfer of land to the Part 3A community body, and
  - (c) the amount attributable to any disturbance to the seller which may arise in connection with the transfer of the land to the Part 3A community body.
- (6) In arriving, for the purposes of this section, at the value which land would have on the open market in the circumstances mentioned in subsection (5)(a)—
  - (a) account may be taken, in so far as a seller and buyer such as are mentioned in subsection (5) would do so, of any factor attributable to the known existence of a person who (not being the Part 3A community body which is exercising its right to buy the land) would be willing to buy the land at a price higher than others would because of a characteristic of the land which relates peculiarly to that person's interest in buying it,
  - (b) no account is to be taken of—
    - (i) any depreciation of the type mentioned in subsection (5)(b),
    - (ii) any disturbance of the type mentioned in subsection (5)(c),
    - (iii) the absence of the period of time during which the land would, on the open market, be likely to be advertised and exposed for sale.
- (7) The expense of a valuation under this section is to be met by Ministers.
- (8) In carrying out a valuation under this section, the valuer must—
  - (a) invite—
    - (i) the owner of the land, and
    - (ii) the Part 3A community body which is exercising its right to buy the land,
 to make representations in writing about the value of the land, and

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- (b) consider any representations made accordingly.
- (9) Where written representations under subsection (8) are received—
- (a) from the owner of the land, the valuer must invite the Part 3A community body which is exercising its right to buy the land to send its views on the representations in writing,
  - (b) from the Part 3A community body which is exercising its right to buy the land, the valuer must invite the owner of the land to send the owner's views on the representations in writing.
- (10) In carrying out a valuation under this section, the valuer must consider any views sent under subsection (9).
- (11) Where the Part 3A community body and the owner of the land have agreed the valuation of the land they must notify the valuer in writing of that valuation.
- (12) The valuer must, within the period set out in subsection (13), notify Ministers, the Part 3A community body and the owner of the land of the assessed value of the land.
- (13) The period referred to in subsection (12) is the period of 8 weeks beginning with the date of appointment of the valuer or such longer period as Ministers may, on an application by the valuer, fix.
- (14) The validity of anything done under this Part is not affected by any failure by a valuer to comply with the time limit specified in subsection (13).

### **97T Compensation**

- (1) Any person, including an owner or former owner of land, who has incurred loss or expense—
- (a) in complying with the requirements of this Part following the making of an application under section 97G by a Part 3A community body,
  - (b) as a result of the withdrawal by the Part 3A community body of its confirmation under section 97P or its failure otherwise to complete the purchase after having so confirmed its intention under that section, or
  - (c) as a result of the failure of the Part 3A community body which made that application to complete the purchase,
- is entitled to recover the amount of that loss or expense from the Part 3A community body.
- (2) There is no such entitlement where the application made under section 97G is refused.
- (3) Where such an application has been refused, the owner of the land who has incurred loss or expense as mentioned in subsection (1)(a) is entitled to recover the amount of that loss or expense from Ministers.
- (4) Ministers may, by order, make provision for or in connection with specifying—
- (a) amounts payable in respect of loss or expense incurred as mentioned in subsection (1),
  - (b) amounts payable in respect of loss or expense incurred by virtue of this Part by a person of such other description as may be specified,
  - (c) the person who is liable to pay those amounts,

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- (d) the procedure under which claims for compensation under this section are to be made.
- (5) Where, at the expiry of such period of time as may be fixed for the purposes of this subsection by an order under subsection (4)(d), any question as to whether compensation is payable or as to the amount of any compensation payable has not been settled as between the parties, either of them may refer the question to the Lands Tribunal.
- (6) Where either of the parties refers a question to the Lands Tribunal as mentioned in subsection (5), the party so referring the question must, within 7 days of the date of referring it, notify Ministers in writing of—
  - (a) the referral of the question, and
  - (b) the date of referring the question.
- (7) The Lands Tribunal must send a copy of its findings on a question referred to it under subsection (5) to Ministers.
- (8) Failure to comply with subsection (6) or (7) has no effect on—
  - (a) the Part 3A community body's right to buy the land, or
  - (b) the validity of the referral of the question under subsection (5).
- (9) The duty in subsection (6) does not apply where the party referring the question mentioned in that subsection is Ministers.

#### **97U Grants towards Part 3A community bodies' liabilities to pay compensation**

- (1) Ministers may, in the circumstances set out in subsection (2), pay a grant to a Part 3A community body.
- (2) Those circumstances are—
  - (a) that after settlement of its other liabilities connected with the exercise of its right to buy land under this Part, the Part 3A community body has insufficient money to pay, or to pay in full, the amount of compensation it has to pay under section 97T,
  - (b) that the Part 3A community body has taken all reasonable steps to obtain money in order to pay, or to pay in full, that amount (other than applying for a grant under this section) but has been unable to obtain the money, and
  - (c) that it is in the public interest that Ministers pay the grant.
- (3) The fact that all the circumstances set out in subsection (2) are applicable in a particular case does not prevent Ministers from refusing to pay a grant in that case.
- (4) A grant under this section may be made subject to conditions which may stipulate repayment in the event of breach.
- (5) Ministers may pay a grant under this section only on the application of a Part 3A community body.
- (6) An application for such a grant must be made in such form and in accordance with such procedure as may be prescribed.

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- (7) Ministers must issue their decision on an application under this section in writing accompanied by, in the case of a refusal, a statement of the reasons for it.
- (8) Ministers' decision on an application under this section is final.

### **97V Appeals**

- (1) An owner of land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.
- (2) A Part 3A community body may appeal to the sheriff against a decision by Ministers not to give consent to the exercise by the Part 3A community body of its right to buy.
- (3) Subsection (2) does not extend to Ministers' decision under section 97K on which of two or more applications to buy the same land is to proceed.
- (4) A person who is a member of a community as defined for the purposes of section 97D in relation to a Part 3A community body may appeal to the sheriff against a decision by Ministers to consent to the exercise by the Part 3A community body of its right to buy land.
- (5) A creditor in a standard security with a right to sell land may appeal to the sheriff against a decision by Ministers to give consent to the exercise by a Part 3A community body of its right to buy the land.
- (6) An appeal under subsection (1), (2), (4) or (5) must be lodged within 28 days of the date on which Ministers decided to consent to the exercise of the right to buy land or refuse such consent.
- (7) The sheriff in whose sheriffdom the land or any part of it is situated has jurisdiction to hear an appeal under this section.
- (8) Where an appeal is made—
  - (a) under subsection (1) the owner must intimate that fact to—
    - (i) the Part 3A community body,
    - (ii) Ministers, and
    - (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,
  - (b) under subsection (2) the Part 3A community body must intimate that fact to—
    - (i) the owner,
    - (ii) Ministers, and
    - (iii) any creditor in a standard security with a right to sell the land to which the appeal relates,
  - (c) under subsection (4) the member of the community must intimate that fact to—
    - (i) the Part 3A community body,
    - (ii) the owner,
    - (iii) Ministers, and

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- (iv) any creditor in a standard security with a right to sell the land to which the appeal relates, or
- (d) under subsection (5), the creditor must intimate that fact to—
  - (i) the Part 3A community body,
  - (ii) the owner, and
  - (iii) Ministers.
- (9) The decision of the sheriff in an appeal under this section—
  - (a) may require rectification of the Register of Community Interests in Abandoned, Neglected or Detrimental Land,
  - (b) may impose conditions upon the appellant,
  - (c) is final.

### **97W Appeals to Lands Tribunal: valuation**

- (1) The owner of the land and the Part 3A community body which is exercising its right to buy the land may appeal to the Lands Tribunal against the valuation carried out under section 97S.
- (2) An appeal under this section must state the grounds on which it is being made and must be lodged within 21 days of the date of notification under section 97S(12).
- (3) In an appeal under this section, the Lands Tribunal may reassess the value of the land.
- (4) The valuer whose valuation is appealed against may be a witness in the appeal proceedings.
- (5) The Lands Tribunal must give reasons for its decision on an appeal under this section and must issue a written statement of these reasons—
  - (a) within 8 weeks of the hearing of the appeal, or
  - (b) where subsection (6) applies, by such later date referred to in paragraph (b)(ii) of that subsection.
- (6) This subsection applies where—
  - (a) the Lands Tribunal considers that it is not reasonable to issue a written statement mentioned in subsection (5) by the time limit specified in paragraph (a) of that subsection, and
  - (b) before the expiry of that time limit, the Lands Tribunal has notified the parties to the appeal—
    - (i) that the Lands Tribunal is unable to issue a written statement by that time limit, and
    - (ii) of the date by which the Lands Tribunal will issue such a written statement.
- (7) The validity of anything done under this Part is not affected by any failure of the Lands Tribunal—
  - (a) to comply with the time limit specified in paragraph (a) of subsection (5), or
  - (b) to issue a written statement by the date referred to in paragraph (b) of that subsection.

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- (8) Where the owner of the land or the Part 3A community body appeals under this section, the owner or, as the case may be, Part 3A community body must, within 7 days of the date on which the appeal is made, notify Ministers in writing of—
  - (a) the making of the appeal, and
  - (b) the date of the making of the appeal.
- (9) The Lands Tribunal must send a copy of the written statement of reasons issued under subsection (5) to Ministers.
- (10) Failure to comply with subsection (8) or (9) has no effect on—
  - (a) the Part 3A community body's right to buy the land, or
  - (b) the validity of the appeal under this section.
- (11) Ministers are not competent parties to any appeal under this section by reason only that they appointed the valuer whose valuation is the subject of the appeal.
- (12) Ministers' powers under the Lands Tribunal Act 1949 to make rules as respects that Tribunal extend to such rules as may be necessary or expedient to give full effect to this section.

#### **97X Reference to Lands Tribunal of questions on applications**

- (1) At any time before Ministers reach a decision on an application which has been made under section 97G—
  - (a) Ministers,
  - (b) any person who is a member of the community defined in relation to the applicant Part 3A community body in pursuance of section 97D,
  - (c) the owner of the land which is the subject of the application,
  - (d) any person who has any interest in the land giving rise to a right which is legally enforceable by that person, or
  - (e) any person who is invited, under section 97G(9)(a)(iv), to send views to Ministers on the application,may refer to the Lands Tribunal any question relating to the application.
- (2) In considering any question referred to it under subsection (1), the Lands Tribunal may have regard to any representations made to it by—
  - (a) the applicant Part 3A community body,
  - (b) the owner of the land which is the subject of the application, or
  - (c) any other person who, in the opinion of the Lands Tribunal, appears to have an interest.
- (3) The Lands Tribunal—
  - (a) must advise Ministers of its finding on any question so referred, and
  - (b) may, by order, provide that Ministers may consent to the application only if they impose, under section 97L, such conditions as the Tribunal may specify.
- (4) If the Lands Tribunal considers any question referred to it under this section to be irrelevant to Ministers' decision on the application to which it relates, it may decide to give no further consideration to the question and find accordingly.

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- (5) Where a person mentioned in any of paragraphs (b) to (e) of subsection (1) refers a question to the Lands Tribunal as mentioned in that subsection, the person so referring the question must, within 7 days of the date of referring it, notify Ministers of—
- (a) the referral of the question, and
  - (b) the date of referring the question.
- (6) Failure to comply with subsection (3)(a) or (5) has no effect on—
- (a) the validity of the application under section 97G by the Part 3A community body,
  - (b) the Part 3A community body's right to buy the land, or
  - (c) the validity of the referral of the question under subsection (1).

### **97Y Agreement as to matters referred or appealed**

An appeal under section 97V or 97W does not prevent the parties from settling or otherwise agreeing the matter in respect of which the appeal was made between or among them.

### **97Z Interpretation of Part 3A**

- (1) Any reference in this Part to a creditor in a standard security with a right to sell land is a reference to a creditor who has such a right under—
- (a) section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or
  - (b) a warrant granted under section 24(1) of that Act.
- (2) In calculating for the purposes of this Part any period of time within which an act requires to be or may be done, no account is to be taken of any public or local holidays in the place where the act is to be done.
- (3) Subsection (2) does not apply to a period of time specified in section 97R(2), 97V(6), or 97W(2).”.

#### **Commencement Information**

- I1** S. 74 in force at 30.6.2017 for specified purposes by [S.S.I. 2017/192, art. 2](#)
- I2** S. 74 in force at 27.6.2018 in so far as not already in force by [S.S.I. 2018/139, art. 2\(a\)](#)



**Changes to legislation:**

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