
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2018 No.

The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018

Restrictions on dealings in section 97G land while application pending

Restriction period

- 11.**—(1) Regulations 12 to 14 apply during the restriction period being the period that—
- (a) begins on the date on which a pending application made under section 97G of the Act appears on the Register of Applications by Community Bodies to Buy Land; and
 - (b) ends on the end date as determined in accordance with paragraph (2) or (3) as the case may be.
- (2) If the Part 3A community body is refused consent to exercise the right to buy land, the end date is the earlier of—
- (a) the day after the expiry of the time period specified in 97V(6) of the Act (appeals) for lodging an appeal against the decision on an application under section 97G of the Act, but only if no appeal is lodged within the appeal period; or
 - (b) the day on which the sheriff issues a decision in an appeal under section 97V of the Act, but only if the outcome of the appeal is that the Part 3A community body is refused consent to exercise the right to buy land.
- (3) If the Part 3A community body is given consent to exercise the right to buy the land, the end date is the earliest of—
- (a) the expiry of the period specified in section 97P(1) of the Act (confirmation of intention to proceed with purchase and withdrawal), but only if the Part 3A community body did not, within that period, notify Ministers and the owner of the land of its intention to proceed to buy the land;
 - (b) the day on which the owner of the land receives a copy of the Ministers' acknowledgement under section 97P(3) of the Act, but only if the matter acknowledged is the Part 3A community body's withdrawal of—
 - (i) its application under section 97G of the Act; or
 - (ii) its confirmation under section 97P(1) of the Act that it intends to proceed to buy the land;
 - (c) the day on which the Part 3A community body's application under section 97G in relation to the land is to be treated as withdrawn under section 97R(5) of the Act (completion of transfer);
 - (d) the day on which the consideration is paid in accordance with section 97R(2) or (3) of the Act provided that, on that day, the owner is able to effect the grant of a good and marketable title to the Part 3A community body; or

- (e) the day on which, following the consignment of the consideration or estimate of what the consideration might be into the Lands Tribunal under section 97R(4) of the Act, the owner grants a good and marketable title to the Part 3A community body or the Part 3A community body gives notice to the Tribunal of its decision not to proceed to complete the transaction.

Certain dealings prohibited during restriction period

12.—(1) The following dealings are prohibited during the restriction period:—

- (a) any transfer of section 97G land or land that includes any section 97G land;
 - (b) any action taken with a view to a transfer of land prohibited by sub-paragraph (a).
- (2) For the purposes of paragraph (1)(b), action is taken with a view to a transfer of land when—
- (a) the land is advertised or otherwise exposed for sale by or with the authority of the owner of the land or a creditor in a standard security with the right to sell the land;
 - (b) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, enters into negotiations with another with a view to the transfer of land; or
 - (c) the owner or such a creditor, or a person acting on behalf of the owner or such a creditor, proceeds further with any proposed transfer of the land which was initiated prior to the date on which the pending application appeared on the Register of Applications by Community Bodies to Buy Land.

(3) Paragraph (1) applies to any person who, but for the prohibition in paragraph (1), would be authorised to carry out a transaction or action referred to in that paragraph.

Exceptions to regulation 12

13.—(1) Subject to paragraph (2), regulation 12 does not prohibit the following dealings in section 97G land:—

- (a) a transfer otherwise than for value;
- (b) a transfer in implement or pursuance of an order of a court (other than an order under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970(1) or a decree in an action for the division and sale of land);
- (c) a transfer between spouses or civil partners in pursuance of an arrangement between them entered into at any time—
 - (i) after they have ceased living together; and
 - (ii) before Ministers have received the application under section 97G of the Act;
- (d) a transfer between companies in the same group;
- (e) a transfer to a statutory undertaker for the purpose of carrying on their undertaking;
- (f) a transfer—
 - (i) implementing the compulsory acquisition of the land under an enactment;
 - (ii) by agreement, of land which could have been acquired compulsorily under an enactment;
 - (iii) implementing any right conferred by or under Part 2, 3 or 3A of the Act;

(1) 1970 c.35, amended by section 4(3) of the Mortgage Rights (Scotland) Act 2001 asp 11, paragraph 1(4) of the schedule of the Homelessness etc. (Scotland) Act 2003 asp 10, section 2 of the Home Owner and Debtor Protection (Scotland) Act 2010 asp 6 and section 152(2) of the Housing (Scotland) Act 2010 asp 17.

- (iv) implementing missives for the sale and purchase of land, but only if, on the date that the missives were concluded, no application under section 97G of the Act was included in the register kept under section 52(1) of the Land Reform (Scotland) Act 2016 (register of applications by community bodies to buy land)⁽²⁾;
- (v) implementing an option to acquire land, but only if, on the date that the option was created, no application under section 97G of the Act was included in the register kept under section 52(1) of the Land Reform (Scotland) Act 2016;
- (vi) vesting the land in a person for the purposes of any enactment relating to sequestration, bankruptcy, winding up or incapacity or to the purposes for which judicial factors may be appointed; or
- (g) a transfer of land in consequence of—
 - (i) the assumption, resignation or death of one or more of the partners in a firm; or
 - (ii) the assumption, resignation or death of one or more of the trustees of a trust.
- (2) The exceptions mentioned in paragraph (1)(a), (d) and (g), do not apply if—
 - (a) the transfer—
 - (i) is, or forms part of, a scheme or arrangement; or
 - (ii) is one of a series of transactions; and
 - (b) the main purpose or effect, or one of the main purposes or effects, of the scheme, arrangement or series of transactions is to avoid the requirements or consequences of regulation 12.
- (3) In paragraph (1)(e), “statutory undertaker” is to be construed in accordance with section 214 of the Town and Country Planning (Scotland) Act 1997(meaning of statutory undertakers)⁽³⁾.

Declaration required for transfers of section 97G land during restriction period

- 14.**—(1) This regulation applies to any transfer of section 97G land during the restriction period, unless the transfer is to the Part 3A community body that made the application under section 97G of the Act.
- (2) The transferor must incorporate in the deed giving effect to the transfer a declaration—
 - (a) specifying which exception under regulation 13(1) is being relied on to override the prohibition in regulation 12; and
 - (b) where the specified exception is an exception mentioned in regulation 13(1)(a), (d) or (g), stating that the exception is not negated by regulation 13(2).

(2) 2016 asp 18.

(3) 1997 c.8, amended by S.I. 2001/1149 and paragraph 10 of schedule 5 of the Transport Act 2000 (c.38).