

# Partial/Final Business and Regulatory Impact Assessment

## **Title of Proposal**

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

## **Purpose and intended effect**

### **Background**

The Community Empowerment (Scotland) Act 2015 fulfils a 2011 manifesto commitment which developed from recognition that empowering communities and reforming public services are crucial for the advancement of all of Scotland.

This BRIA has been prepared to accompany the secondary legislation relating to Part 3A of the Land Reform (Scotland) Act 2003 (the “2003 Act”).

The policy proposals relating to the proposed secondary legislation will set out, for the purposes of Part 3A of the 2003 Act:

- Factors that Ministers consider they must take into consideration when deciding what land will be treated as eligible land for the purposes of Part 3A of the 2003 Act;
- Land on which there is a building or structure which Ministers consider is, or is treated as, a person’s home. Such land will not be treated as eligible land;
- What other land Ministers consider will be treated as being part of a person’s home so will not be eligible land;
- Descriptions or classes of occupancy or possession of homes which Ministers consider are, or are to be treated as, a tenancy for the purposes of Part 3A of the 2003 Act so will be treated as eligible land;
- A proposed list of bodies which Ministers consider are eligible regulators for the purposes of Part 3A of the 2003 Act. The Part 3A community body will be required to consider which regulator(s) on the list set out in the regulations they should approach to request that the regulator(s) take steps to mitigate the harm being caused to the environmental wellbeing of the local community;
- What prohibitions or suspension of rights Ministers consider will be placed on the sale or transfer of land and what rights over land will be suspended, once a valid Part 3A application for consent has been received by Ministers and when the prohibitions and suspensions placed on the land may be lifted;
- The circumstances in which Ministers consider that a Part 3A community body can apply for the cost of the ballot to be reimbursed by Ministers;  
The process by which Ministers consider compensation can be claimed by any person (excluding the Part 3A community body), such as the current or former landowner, who has incurred loss or expense in connection with a Part 3A application for consent.

**Objective**

The secondary legislation seeks to specify the various steps and considerations mentioned above, and followed a period of consultation and meetings with various stakeholders.

**Rationale for Government intervention**

The Scottish Government continues to recognise the importance of community ownership of land in empowering the people of Scotland. Ministers consider that community ownership has a transformational impact on communities, increasing community confidence and developing vibrant and flourishing communities.

Ministers also recognise that land that is neglected or abandoned can be a barrier to the sustainable development of land. In some cases it may prevent the committee from developing or improving facilities. Ministers consider that, where all other options fail to achieve improvement, communities should be able to acquire the land without having to wait for it to be put on the market. Such an approach was considered to be required in legislation, with the provisions split between primary and secondary legislation in Part 3A of the 2003 Act, as introduced by the Community Empowerment (Scotland) Act 2015.

It will therefore allow communities to take control of problem land within their communities which otherwise may continue to be a blight on them, and to help communities to continue to flourish and prosper.

## **Consultation**

### **Within Government**

Prior to the introduction of the 2015 Act, Scottish Government officials have been consulted in the following policy areas: planning, regeneration, compulsory purchase, property, finance, housing policy.

### **Public Consultation**

Scottish Ministers have had over ten years of experience in working with communities since the 2003 Act came into force. That experience has been drawn upon and used in the development of the Part 3A legislative provisions. As part of that development, Ministers have recognised the importance of keeping the legislative provisions, and the policies relating to them, aligned across the different parts of the Act, and where appropriate, aligning certain policies in the provisions between Parts 3 and 3A of the Act where similarities in process arise.

Stakeholder engagement and consultations on the community rights to buy elements of the 2015 Act took place during 2012 and 2013.

A formal public consultation on the proposed secondary legislation took place between March and June 2016.

### **Business**

Scottish Government officials have been in contact with key stakeholders throughout the development of the Community Empowerment (Scotland) Bill.

Following the consultation, officials held a series of discussions with key stakeholders based upon the responses received to this consultation. These took place in January 2018

## **Options**

### **Option 1 – introduce secondary legislation**

The legislative provisions of Part 3A of the 2003 Act are split between primary legislation and secondary legislation. Secondary legislation must be developed to ensure that the full legislative provisions are available for the new Part 3A of the 2003 Act to operate. The secondary legislation defines key elements of the legislative provisions. These include: factors that Ministers are to take into consideration when deciding what is eligible land, what land on which there is a building or structure is, or is to be treated as, a person's home so will be ineligible for transfer under Part 3A of the 2003 Act; what other land is to be treated as a person's home; what prohibitions or suspension of rights are placed on land to prevent the land from being sold or transferred when a valid application is made, who is affected by the prohibitions, and for what period the prohibitions and suspensions will apply.

Land that is abandoned or neglected or is otherwise causing harm to the environmental wellbeing of the local community is often seen as a blight on the

surrounding area. The legislative provisions, together with the policy proposals which have been brought forward in the secondary legislation, will contribute to furthering the achievement of sustainable development in relation to that land.

### **Sectors and groups affected**

**Communities:** The proposals have the potential to affect all communities throughout Scotland, rural and urban, by conferring greater powers to them. It will give the communities the opportunity to take steps to deal with land that is neglected or abandoned that is considered to be a barrier to the sustainable development of the land.

**Landowners/creditors in a standard security:** The proposals will have potential to impact all landowners and any creditors in a standard security with the right to sell land in cases where their property is neglected or abandoned, and a community wish to exercise their powers under Part 3A of the 2003 Act.

Landowners could include private individuals, businesses, local authorities and Government, though this list is not exhaustive.

### **Scottish Ministers and the Scottish Government which will administrate these new policies which will be brought forward in secondary legislation:**

As a number of applications will be received as a result of the new legislative provisions, there will need to be consideration given to ensure appropriate staff resources and to meet the costs associated with administering the process.

**Legal/Courts:** There are a number of appeals provisions relating to the policy proposals (as also the primary legislation). The Lands Tribunal and the Sherriff Court may receive appeals in relation to a Part 3A application or Ministerial consent. However, we consider that this number will be small.

### **Benefits**

The existing community rights to buy have demonstrated that where communities are able to buy land within their community, the responsibility and opportunity that come with this empowers them. They make decisions about the future of that land that deliver broader benefits to the communities.

Part 3A will allow Part 3A community bodies to identify land within their community's defined area which they consider is wholly or mainly abandoned or neglected or land for which the use of management is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community and which they would then be able to purchase, at market value, if all other options fail to achieve improvement, and if they meet the criteria for consent. Land that is community owned will benefit from investment and improvements that may otherwise not occur. This will meet the overall policy objective that the right to buy is compatible with furthering the achievement of sustainable development in relation to the land and that the continued ownership of the land by the owner is inconsistent with furthering the achievement of sustainable development in relation to the land.

The development of policy proposals which will be brought forward in the secondary

legislation, and will be used in conjunction with the primary legislation, may encourage landowners to take steps to deal with land that is wholly or mainly abandoned or neglected or the use of which is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of a relevant community, thus furthering the achievement of sustainable development in relation to the land. This will have an impact in relation to the land a community has identified.

### **Costs**

Costs of administering the new Part 3A legislation are detailed in the BRIA which was prepared for the introduction of the Community Empowerment (Scotland) Bill (reproduced below) and encompass these proposals outlining the policy for secondary legislation:

### **Administration of the compulsory purchase powers for communities – specific costs to Scottish Ministers**

Based on experience of the community right to buy in the last 10 years, we have identified that 10 of the applications to register a community interest in land during that period related to land that could be considered to be abandoned or neglected. As this new power applies to all of Scotland, we estimate, based on rough population share, that 8 applications a year could be received by Ministers.

We consider that this is a modest estimate. Given that the policy proposals for the secondary legislation, together with the primary legislation in Part 3A apply throughout Scotland and to both rural and urban areas, this could rise to a similar average of approximately 17 applications a year, as is currently received by Ministers in relation to the community right to buy that applies only to rural Scotland.

The costs incurred by this new Part to the Land Reforms (Scotland) Act 2003, are expected to be:

- Additional staff: **£85,000**
- Additional administrative costs of Community Right to Buy Branch: **£8,000**
- Costs to the Registers of Scotland/Registers of Community Interests in Land (RCIL): **£30,000**
- Valuation costs: approximately **£20,000** annually, based on eight valuations annually at an average of £2,500 each. These costs may rise or fall depending on number of valuations undertaken in any given year.
- Legal costs: **£20,000** annually. This figure is based on the experience of the former Community Right to Buy Branch, which has varied from one year to another depending on need.
- Estimated total cost for compulsory purchase powers for communities amounts to: **£142,000**.

**Costs to Community Bodies and Landowners:** Communities seeking to use the provisions will incur some initial set-up costs. They will also incur costs for any specialist advice in relation to their Part 3 application for consent and also costs relating to searches for land title.

The costs will vary from community to community depending on the level of activity. They will also vary according to whether they have engaged professional legal help to assist them through the legislative provisions.

Scottish Ministers have not carried out a review on costs to community bodies. This is because it will be the responsibility of the Part 3A community body embarking on the use of the Part 3A provisions to decide the best way for it to proceed.

It will be up to landowners to decide how to respond to a Part 3A application for consent and how and when to seek professional fees during the process.

Landowners will incur costs in relation to seeking professional advice during any sale period, i.e. solicitors' and estate agents' fees, as well as court fees. Compensation may be given by Scottish Ministers in certain circumstances.

### **Option 2 – do nothing**

The legislative provisions of Part 3A of the 2003 Act are divided between primary legislation and secondary legislation. Secondary legislation must be developed to ensure that the full legislative provisions are available to enable the new Part 3A of the 2003 Act to operate. In bringing forward the secondary legislation, it is necessary to develop policy proposals.

Therefore, the option of doing nothing is not appropriate here.

### **Scottish Firms Impact Test**

Since the 2003 Act was implemented in 2004, Scottish Ministers have engaged with landowners, including private individuals, public bodies and businesses during formal consultations and research reviews.

In December 2013 a meeting was held with Community Land Scotland which was broadly supportive of the proposals set out in the Community Empowerment (Scotland) Bill. However, that meeting expressed views that the compulsory purchase powers for communities in Part 3A should not be limited to neglect and abandoned land. A meeting was held with Scottish Land and Estates in January 2014. Their membership was of the view that the Part 3A right to buy should not be included in the Bill.

Following this public consultation, officials will again where necessary hold a series of discussions with key stakeholders based upon the responses received to this consultation.

### **Competition Assessment**

This policy should not impact on competition within any particular sector.

### **Test run of business forms**

There are no business forms associated with these proposals.

### **Legal Aid Impact Test**

It will be up to communities and landowners to decide whether they should obtain professional assistance in respect of an application for consent under the community right to buy abandoned, neglected or detrimental land in part 3A of the 2003 Act and the policy proposals set out in the consultation. We are aware that communities, through community bodies (including Part 3A community bodies) are unable to apply for legal aid. We do not consider that this proposal will have any impact on legal aid.

For advice please contact the Access to Justice Team at [legalaidtrawl@scotland.gsi.gov.uk](mailto:legalaidtrawl@scotland.gsi.gov.uk) – **You should allow 10 working days for a response.** Record the results of your discussion with the Access to Justice Team in this section.

### **Enforcement, sanctions and monitoring**

The policy proposals, which will be brought forward in secondary legislation, will underpin aspects of the administrative process, as set out in the legislation in the new Part 3A of the 2003 Act.

The administration of these legislative provisions will be undertaken by the Scottish Government, with any appeals being dealt with by the appropriate courts set out in the provisions.

### **Implementation and delivery plan**

A full 12 week consultation on policy proposals took place between March and June 2016, to allow stakeholders adequate time to provide their views and feedback on proposals relating to secondary legislation for Part 3A of the 2003 Act. It is planned for the Scottish Statutory Instruments to be placed before the Scottish Parliament in June 2018. Thereafter, the statutory instruments will commence after they have completed the parliamentary process.

### **Post-implementation review**

Post-implementation review of the compulsory purchase powers for communities will take place as and when required by Ministers.

### **Summary and recommendation**

Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	The proposals will increase the uptake of the 2003 Act, through use of the Part 3A provisions. Will help communities throughout	£142,000 administrative costs to Ministers.

	<p>Scotland to deal with land that is neglected or abandoned or 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.</p> <p>The proposals will, through the administrative process empower communities across the whole of Scotland.</p>	
2	<p>None – will mean that the Part 3A of the 2003 Act will not be able to operate. This is because the legislation is divided between primary and secondary legislation.</p>	<p>Will mean that there are not full administrative provisions for Part 3A of the 2003 Act and the provisions cannot be used.</p> <p>Will hinder the development of land that is considered to be wholly or mainly abandoned or neglected or 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, as well as community empowerment across the whole of Scotland.</p>



**Declaration and publication**

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

- Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: Roseanna Cunningham**

**Cabinet Secretary for the Environment, Climate Change and Land Reform**

**Date:**

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