Lynn Tullis  
Clerk to Environment, Climate Change  
and Land Reform Committee

By email only

15th May 2018

Dear Lynn,

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

I’m writing on behalf of Community Land Scotland to express concerns we have in relation to the above regulations  
which are now before the Environment, Climate Change and Land Reform Committee. During the Stage 3 debate for  
the Community Empowerment (Scotland) Act 2015, the then Land Reform Minister, Dr Aileen McLeod, gave the  
following clear commitments to Parliament regarding the meaning of ‘environmental wellbeing’ in relation to  
abandoned, neglected or detrimental land.

“Environmental wellbeing is not being defined in the bill as I want it to have a broad meaning for the  
purposes of part 3A of the 2003 act and not be restricted to harm that is caused to just the physical condition of  
the community. Harm to the community’s environmental wellbeing, for example, may affect the amenity of the  
community. That may include cases where the use or management of the land causes or results in harm to the  
community such as the detrimental impact that a group of boarded-up shops, unoccupied housing or algae-filled  
ponds that are becoming health hazards might have on the community’s environmental well-being”.

“I reassure members that the definition of environmental wellbeing has a wide meaning and encompasses some  
social considerations”.

Community Land Scotland is concerned that “harm to environmental wellbeing” of communities, as defined in the  
regulations, does not meet the commitments for a wide meaning of the concept as expressed by Dr McLeod during  
the Bill’s Stage 3 debate. Our concern as to the potential efficacy of the regulations in that regard is magnified by  
their exclusive focus on statutory nuisances as defined in section 79(1) of the Environmental Protection Act 1990,  
without recourse to wider considerations of social well-being which contribute to communities’ sustainability. As  
the Committee will be aware, wider considerations of social well-being exist in other legislation in relation to land.  
For example, Regulation 4 of the Disposal of Land by Local Authorities (Scotland) Regulations 2010 (SSI 2010, No.  
160), with reference to section 20 of the Local Government in Scotland Act 2003, provides for a local authority to  
dispose of land for a consideration less than the best that can be obtained” where one of the following four  
purposes is promoted: economic development or regeneration; health; social well-being; or environmental well-
being.

A previous draft of the regulations shared by Scottish Government officials with stakeholders, including Community  
Land Scotland, contained the following provisions for potential inclusion as part of regulation 6 (then 6.-1(e)):

“[the extent, if any, to which the use or management of the land has, or is likely to have, any detrimental effect on -

(i) the amenity and prospects of the relevant community;
(ii) the preservation of the relevant community or its development;
(iii) the social development of the relevant community;
The concepts contained in the above draft provisions had been promoted by Community Land Scotland. We were therefore pleased to see them being considered and strongly endorsed the inclusion of the above provisions in the draft regulations because they sought to honour the above-noted commitments given to Parliament by the Minster in relation to the meaning of “environmental wellbeing”. The above draft provisions were also endorsed by other stakeholders including Development Trusts Association Scotland, Community Woodlands Association, Scottish Community Alliance and the Scottish Land Commission. Community Land Scotland would have been content to have seen different and more precise legal drafting of the above proposed provisions in keeping with their intent. However, the omission of these provisions or any analogous provisions in the regulations tabled for approval means that what constitutes harm to environmental wellbeing is now extremely narrowly drawn. It is therefore questionable whether the regulations meet the commitments for the provisions set out by the Minister in Parliament during the Bill’s Stage 3 debate, and which Parliament accepted.

Community Land Scotland is aware that that a number of communities are looking forward to these regulations coming into force in anticipation of their potential relevance to circumstances faced by these communities. However, we are concerned that the regulations are now so narrowly drawn that their practical utility for communities will be negligible in all but the most limited circumstances. In turn, we are concerned that drawing the regulations so narrowly will unnecessarily frustrate the policy intention of creating the Community Right to Buy Abandoned, Neglected or Detrimental Land provisions in the Community Empowerment (Scotland) Act 2015.

The regulations have been drafted against the backdrop of the Land Rights and Responsibilities Statement, produced by Scottish Ministers under requirements from Part 1 of the Land Reform (Scotland) Act 2016. The production of that statement is a significant development in policy regarding land and is highly relevant to the draft regulations now under consideration. Ministers are under a duty to promote the principles of the Land Rights and Responsibilities Statement, so far as is reasonably practical. Community Land Scotland believe it is important to see relevant matters from within the Land Rights and Responsibilities Statement referenced in relation to the matters Ministers must have regard to in considering the question of eligible land under the draft regulations’ provisions. An annex to this letter gives more detail which we provided to Scottish Government officials as to how this might be done. The annex also includes detail regarding how Human Rights considerations might be incorporated into the draft regulations.

Community Land Scotland would welcome further consideration as to whether the tabled regulations provide sufficient scope for communities to use the new Right to Buy to help safeguard their sustainability.

Please do not hesitate to get in touch, should you require any further information regarding the above or any related matter.

Yours sincerely,

Dr Calum MacLeod
Policy Director
Community Land Scotland
ANNEX A: Community Land Scotland’s suggestions regarding relevant matters in considering ‘Eligible Land’ within The Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018

Community Land Scotland believe it is important to see relevant matters from within the Land Rights and Responsibilities Statement referenced in relation to the matters Ministers must have regard to in considering the question of eligible land under the following draft provisions at 6.- (1)(e):

“[the extent, if any, to which the use or management of the land has, or is likely to have, any other detrimental effect on—

(i) the amenity and prospects of the relevant community;
(ii) the preservation of the relevant community or its development;
(iii) the social development of the relevant community;
(iv) the realisation of the human rights of the members of the relevant community.]”

This might be done as follows within the draft regulations:

A) At 3.(1) add (d) to the effect; “is consistent with high standards of land ownership, management and use”

B) At 3(2) “high standards of land ownership and use” has the meaning given in Principle 4 of the Land Rights and Responsibilities Statement 2017 and the accompanying Advisory Notes to that Principle.

C) At 5. add a (d) to the effect: “whether the land is being maintained in a manner consistent with meeting high standards of ownership, management and use”

D) Further adding at the end of this part a (2) “In this section “high standards of land ownership and use” has the meaning given in Principle 4 of the Land Rights and Responsibilities Statement 2017 and the accompanying Advisory Notes to Principle 4.”

E) At regulation 6 (1) add an additional point to the effect: “whether the use or management of the land is consistent with furthering the Principles of the Land Rights and Responsibilities Statement 2017, its Advisory Notes and Annexes”.

Community Land Scotland believe this reference in a new part within 6(1) would be particularly important, dealing as it does with questions arising within the detrimental land provisions and in which the Land Rights and Responsibilities Statement is highly relevant.
Other points:

Human Rights

The earlier draft regulations (see above) at 6-1(e)(iv) refers to “the realisation of human rights”, etc. It may be appropriate to alter the current draft provision to make it clearer. This might be done thus, substituting the words:

“the fulfillment of relevant human rights and such internationally accepted principles and standards for responsible practices in relation to land as the Scottish Ministers consider to be relevant.”

It may be appropriate to define what is meant by “human rights” and “and such internationally accepted principles and standards for responsible practices in relation to land” by adding a (2) to the effect that

“1. In this regulation – the “human rights” considerations Ministers must have regard to means—

(a) the Convention rights (within the meaning of section 1 of the Human Rights Act 1998), and

(b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom, including the International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 subject to—

(i) any amendments in force in relation to the United Kingdom for the time being, and

(ii) any reservations, objections or interpretative declarations by the United Kingdom for the time being in force

(d) the human rights considerations referred to in Annex A to the Land Rights and Responsibilities Statement 2017

2. In this regulation the “internationally accepted principles and standards for responsible practices in relation to land” include the principles and standards contained in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security issued by the Food and Agriculture Organization of the United Nations and endorsed by the Committee on World Food Security on 11 May 2012.

[Note: these references to what “human rights” and “internationally accepted principles and standards for responsible practices in relation to land” is taken from the Land Reform (Scotland) Act 2016 at Part 1 (6) and the Land Rights and Responsibilities Statement Annex A.]