The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.

2. **Declaration of interests:** Alex Neil will be invited to declare any relevant interests.

3. **Subordinate legislation:** The Committee will take evidence on the Environmental Authorisations (Scotland) Regulations 2018 [draft] from—

   Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, and Joyce Carr, Head of Water Environmental Team, Scottish Government.

4. **Subordinate legislation:** Roseanne Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform) to move—

   S5M-12403— That the Environment, Climate Change and Land Reform Committee recommends that the Environmental Authorisations (Scotland) Regulations 2018 [draft] be approved.

5. **Subordinate legislation:** The Committee will take evidence on the Community Right to Buy (Abandoned, Neglected or Detrimental Land) Regulations 2018 from—

   Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, Dr Simon Cuthbert-Kerr, Head of Land Reform Unit, and Andrew Ruxton, Scottish Government Legal Directorate, Scottish Government.

6. **Subordinate legislation:** Roseanne Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform ) to move—
S5M-12209—That the Environment, Climate Change and Land Reform Committee recommends that the Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018 [draft] be approved.

7. **Subordinate legislation:** The Committee will consider the following negative instruments—

   Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018 (SSI 2018/137) and Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 (SSI 2018/140).

8. **Climate Change Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

Lynn Tullis  
Clerk to the Environment, Climate Change and Land Reform Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5240  
Email: ecclr.committee@parliament.scot.
The papers for this meeting are as follows—

**Agenda Item 3**
Environmental authorisations cover note

**Agenda Item 5**
PRIVATE PAPER

**Agenda Item 7**
Community empowerment subordinate legislation cover note

**Agenda Item 8**
PRIVATE PAPER
Environmental Authorisations (Scotland) Regulations 2018 [draft]

Type of Instrument: Affirmative
Laid Date: 8 May 2018
Circulated to Members: 10 May 2018
Meeting Date: 29 May 2018
Minister to attend meeting: Yes

Reported to the Parliament’s attention by the Delegated Powers and Law Reform Committee: No

Reporting deadline: 16 June 2018

Procedure for Affirmative instruments

1. The draft regulations were laid on 8 May 2018 and referred to the Environment, Climate Change and Land Reform Committee. The regulations were subject to affirmative procedure (Rule 10.6). It is for the Environment, Climate Change and Land Reform Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Environment, Climate Change and Land Reform has, by motion S5M-12403 (set out in the agenda), proposed that the Committee recommends the approval of the regulations.

Purpose

2. These Regulations are made under sections 18 and 58 of the Regulatory Reform (Scotland) Act 2014. They provide a framework for the authorisation of environmental activities (which are defined as regulated activities and currently include only radioactive substances activities) in Scotland. They repeal the Radioactive Substances Act 1993, and provide a new regulatory framework for radioactive substances activities.

Delegated Powers and Law Reform Committee

3. At its meeting on 22 May 2018, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Other Documents
4. The Committee received correspondence from the Cabinet Secretary for Environment, Climate Change and Land Reform on the transposition of the EURATOM Basic Safety Standards Directive 2013 as it relates to the instrument on 23 May 2018. This is available at Annexe A. Scottish Government documents accompanying the instrument can be found at Annexe B.

Recommendation

5. The Committee must decide whether or not to agree to the motion, and then report to Parliament accordingly, by 16 June 2018.

Clerks
Environment, Climate Change and Land Reform Committee

Annexe A

21 May 2018

Dear Graeme,

TRANSPOSITION OF THE EURATOM BASIC SAFETY STANDARDS DIRECTIVE 2013

The draft Environmental Authorisations (Scotland) Regulations 2018 are currently being considered by the Environment, Climate Change and Land Reform Committee. As you will be aware, these Regulations transpose significant elements of the measures to protect the public from exposures to radiation contained in the Euratom Basic Safety Standards Directive 2013 (BSSD 2013). I would like to take this opportunity to update the Committee on the overall progress with the transposition of the public exposures elements of this Directive. Many other parts of the Directive are in reserved policy areas, for example on health and safety of workers. Other devolved elements, for example on health services, have been taken forward by the relevant parts of the Scottish Government.

It is a matter of regret that Scotland has missed the transposition deadline in February 2018, alongside the rest of the UK and many other Member States. This has been communicated by the UK Government to the Commission of the European Communities, and we have provided estimates of the time it will take to put the remaining measures in place to achieve transposition.

A summary of the public exposures measures that have been taken and are being put in place is:-

- the Environmental Authorisations (Scotland) Regulations 2018 provisions for the regulation of activities involving radioactive substances, which transpose the relevant aspects of the BSSD 2013 to ensure protection of the public from exposures as the regime is translated from the old provisions in the Radioactive Substances Act 1993;
- two sets of UK Regulations that cover a mixture of reserved and devolved measures; *The Justification of Practices Involving Ionising Radiation (Amendment) Regulations*, which make minor amendments to the existing UK regime to authorise new activities involving radioactive substances, and *The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations*, which include a variety of measures from the BSSD 2013 that could not be straightforwardly accommodated in existing regulatory provisions, including certain devolved powers that I agreed were best accommodated within these regulations;

- a Scotland Act Section 104 Order is being prepared, that will bring the regulation of radioactive substances in the offshore sector into line with the new arrangements onshore, and provide powers to make Directions with respect to withholding information on radioactive sources for the purposes of security;

- a Ministerial Direction to SEPA, which is being prepared, that will ensure the reporting of standardised information on radioactive airborne and liquid discharges into the environment from nuclear power stations and nuclear processing plants, as required by the BSSD;

- updates to the Radioactive Contaminated Land (RCL) regime. This is the area where we are most seriously delayed relative to the transposition deadline. This delay will have no significant impact on individuals or communities as Scotland already has a mature RCL regime, and effective planning and public health systems; the changes to the regime are minor, and will only take effect when an individual area is being considered as potential RCL; and no area of land is currently under formal consideration under the regulations as potential RCL. However, we still need to explicitly reflect the BSSD in our RCL regime, and wish to improve the guidance in the light of experience with the regime. We shall bring forward a consultation soon.

This has been a complex and lengthy transposition process, which I am determined, will be completed before the end of this year.

Yours,

Roseanna Cunningham
As per purpose above and including:

EXPLANATORY NOTE
(This note is not part of the Regulations)
These Regulations are made under sections 18 and 58 of the Regulatory Reform (Scotland) Act 2014 (2014 asp 3). They provide a framework for the authorisation of environmental activities (which are defined as regulated activities and currently include only radioactive substances activities) in Scotland. They repeal the Radioactive Substances Act 1993 (1993 c.12), and provide a new regulatory framework for radioactive substances activities.


These Regulations come into force on 1st September 2018 and have effect subject to the transitional and savings provisions in schedule 5. A registration or authorisation under the Radioactive Substances Act 1993 is deemed to be an authorisation. Activities which are not regulated under the Radioactive Substances Act 1993 but which are radioactive substances activities under these Regulations will generally require an authorisation by the date falling after the end of a period of 6 months from the date these Regulations come into force.

Part 1 of these Regulations provides for meaning of terms used in these Regulations, and the requirement for a person in control of a regulated activity to have an authorisation. Regulation 9 provides for general aims which SEPA must take into account when carrying out its functions.

Part 2 of these Regulations provides for the carrying on of regulated activities in accordance with general binding rules. Schedule 9 sets out the general binding rules which are specified for radioactive substances activities.

Part 3 of these Regulations provides for the carrying on of regulated activities in accordance with a notification, including cessation of the activity and surrender of the notification.

Part 4 of these Regulations provides for the carrying on of regulated activities in accordance with a registration, including the form of applications, the content of a registration and the grant and variation of a registration.

Part 5 of these Regulations provides for the carrying on of regulated activities in accordance with a permit, including the form of an application, the content of a permit and the grant, variation and review of a permit. Schedule 1 makes further provision for the procedures for applying for and granting a registration or permit, and schedule 2 provides for the imposition by SEPA of requirements in permits and notices relating to land not controlled by the authorised person.
Part 7 allows for determination of standard rules. A permit or a registration may be subject to standard rules.

Part 8 of these Regulations provides for the transfer, revocation and surrender of registrations and permits.

Part 9 of these Regulations provides for the Scottish Ministers and SEPA having power to require information for specified purposes and for the requirement for SEPA to make information available to the public via a register. Provision is made for certain categories of information to be excluded from the register. Schedule 3 sets out the information to be included in the register.

Part 10 of these Regulations provides for enforcement. SEPA has power under regulation 46 to serve regulatory notices which can include a requirement for a regulated activity to cease. Regulatory notices may require action to be taken on land not in control of the authorised person.

Under Part 11 of these Regulations SEPA may serve a cost recovery notice requiring payment of the costs incurred in serving a regulatory notice or a remediation notice. Regulation 51 sets out the costs that may be recovered and the requirements for a notice. Regulation 54 contains provisions for the service of all forms of notice provided for in these Regulations.

Part 12 of these Regulations provides for appeals to the Scottish Ministers, for the effect of an appeal on the matter being appealed, and the determination of appeals by the Scottish Ministers. Schedule 4 makes further provision in relation to appeals.

Part 13 of these Regulations provide for SEPA’s functions and duties. SEPA is given power to impose authorisations, to escalate or de-escalate authorisations and to consolidate authorisations. Regulation 59 requires SEPA to carry out its functions in accordance with the technical schedule. Part 14 of these Regulations provides for the publication of guidance by SEPA.

Part 15 of these Regulations provides for the creation of criminal offences, as well as the creation of a defence and provision relating to the admissibility of evidence. Regulation 75 gives power to a court to order an offence to be remedied.

Part 16 allows the Scottish Ministers to give guidance to SEPA in relation to SEPA’s functions under these Regulations and in connection with the carrying on of a regulated activity by SEPA.

Part 17 provides that these Regulations bind the Crown with the exception of premises used by the Crown for defence purposes.

Schedules 6 and 7 provide for consequential modifications and repeals and revocations.

Schedule 8 is the technical schedule which defines the scope of a radioactive substances activity, and the specific requirements that apply to applications and authorisations for radioactive substances activities. Provision is made in this schedule for certain provisions in the BSSD, including Articles 5 and 12 (paragraph
The above instrument is made in exercise of the powers conferred by sections 18 and 58 and schedule 2 of the Regulatory Reform (Scotland) Act 2014 ("the 2014 Act"). The instrument is subject to affirmative procedure.

**Policy Objectives**

These Regulations introduce the basis for an integrated framework of environmental authorisations. The purpose of the framework is to integrate the authorisation, procedural and enforcement arrangements relating to the existing water, waste, radioactive substances and pollution prevention and control regimes.

The Regulations are the first step towards the delivery of this integrated framework. They put in place the common framework and introduce the technical provisions relating to the radioactive substances regime.


**Consultation**

In January 2017, a consultation on a detailed set of proposals was published. 61 responses were received. The vast majority of respondents agreed with the proposals, and feedback was taken on board to inform the development of the draft Regulations. These matters are described in the consultation report published on the Scottish Government website.

The draft Regulations were subject to public consultation during September-November 2017. This time 29 responses were received. The bulk of the detailed provisions set out in the draft Regulations were widely supported. Some comments on specific points of detail were made, and these have been taken into account in preparing this version. These matters are described in the consultation report published on the Scottish Government website.

**Impact assessments and financial effects**

There are no equality/children’s/privacy issues so no impact assessments on these matters have been completed.

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

Scottish Government
Environmental Quality and Circular Economy Division
May 2018
Business and Regulatory Impact Assessment

Title of Proposal
Integrated Framework of Environmental Authorisations

Purpose and intended effect

Background
One of the main ways in which the environment and human health are protected in Scotland is by a system of environmental authorisations (such as permits, registrations and general binding rules). These authorisations are an integral tool in SEPA’s approach to controlling and minimising the impact of certain activities on the environment.

Each regulatory regime which SEPA is responsible for, however, has a different history and has developed and evolved largely separately, adopting a variety of approaches to achieve similar outcomes. The procedures and requirements associated with the different regimes are also inconsistent. This is unnecessarily complicated and onerous to administer, both for SEPA and business.

Objective
The integrated framework of environmental authorisations will bring together all the permissioning arrangements for SEPA’s four main regulatory (water, waste, radioactive substances and pollution prevention and control) into a single permissioning structure and under a single set of standardised procedures (subject to the requirements of European and national legislation).

Rationale for Government intervention
Protecting the environment is not just a valuable end in itself. Scotland’s natural resources are vital to its economic success and the health and wellbeing of its citizens.

Many of Scotland’s most successful industries depend on our natural assets and the sustainable use of our environment is intrinsically linked to our economic potential as a nation. Scotland’s environment provides a range of resources and services the value of which is estimated to be between £21 billion and £24 billion per year.

A healthy and flourishing environment is essential in ensuring that people in Scotland lead longer, healthier lives, that they value and enjoy their natural and built environment, and that our communities thrive and can access the amenities and services they need.

By enabling a more proportionate, risk-based and outcome-focussed approach to environmental authorisation, the Integrated Authorisation Framework will support a number of National Outcomes in the Scottish Government’s National Performance Framework, including:

- We live in a Scotland that is the most attractive place for doing business in
Europe;
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others;
- We value and enjoy our built and natural environment and protect it and enhance it for future generations;
- We reduce the local and global environmental impact of our consumption and production;
- Our public services are high quality, continually improving, efficient and responsive to local people's needs;
- We live longer, healthier lives;
- We live our lives safe from crime, disorder and danger.

Consultation

Within Government
Development of these proposals, as well as the wider Better Environmental Regulation programme, has been a joint activity between the Scottish Government and SEPA. There has also been wider engagement with a range of officials across Scottish Government and with the UK Government and other devolved administrations to discuss and refine the proposals where appropriate.

Public Consultation
The Better Environmental Regulation programme has been subject to extensive consultation over a period of approximately 6 years. A consultation on the high level principles behind the main elements of the programme was undertaken between May and August 2012. Analysis of responses to that consultation indicated strong and widespread support for simpler, more risk-based environmental regulation with more integrated permissions and a single consistent regulatory procedure. In particular the proposal to adopt a simplified, proportionate and risk-based approach was supported by 92% of respondents.

A further consultation on the detail of the proposed integrated authorisation framework was carried out between January and April 2017. Again there was widespread support for every proposal.

Business
A series of stakeholder workshops, involving a range of businesses, trade bodies and other interested stakeholders, have taken place over recent years to support the development and implementation of the Better Environmental regulation programme. In addition to general stakeholder workshops, a number of workshops were organised on a sectoral basis.

These workshops provided useful and constructive feedback about the detailed proposals. This feedback has informed the finalisation of the framework now presented in the draft Regulations.

Options

Options summary:
Option 1 - Do Nothing / Status Quo.
Option 2 - Partial integration/ Integrate 2 of SEPA's main regulatory regimes
Option 3 - Integrate SEPA's 4 main regulatory regimes

Option 1 – Do Nothing / Status Quo
This approach would leave SEPA’s existing regulatory regimes unchanged. This would mean that regulatory requirements, procedural arrangements and terminology would remain inconsistent across SEPA regimes.

Sectors and Groups Affected
- Regulated businesses;
- Local communities;
- SEPA.

Benefits
- The implementation costs associated with integrating SEPA regimes (such as the staff costs associated with developing and implementing new procedures and guidance) are not incurred;
- Regulated businesses are already familiar with existing procedures, forms etc.

Costs
- The efficiencies and savings (both for regulated businesses and SEPA) associated with a simplified, streamlined and standardised process are not delivered;
- The opportunity to deliver single site and corporate permits will be lost;
- Costs associated with poor operator performance and the environmental harm caused by rogue operators (both financial and in terms of reputational damage) continue to be indirectly borne by legitimate businesses.

Option 2 – Partial integration/ Integrate 2 of SEPA’s main regulatory regimes
This approach would integrate a couple of SEPA’s existing main regulatory regimes. This would mean that certain regulatory requirements, procedural arrangements and terminology would be integrated but that others would remain inconsistent across the remaining SEPA regimes.

Sectors and Groups Affected
- Regulated businesses;
- Local communities;
- SEPA.

Benefits
- The benefits in terms of simplicity, transparency and consistency would be obtained by those sectors regulated under these particular regimes

Costs
- The efficiencies and savings (both for regulated businesses and SEPA) associated with a simplified, streamlined and standardised process are not
optimised and the benefits not delivered;
- The opportunity to deliver single site and corporate permits will not be available for certain regulated businesses;
- This partial integration would increase confusion for certain regulated businesses.

Option 3 - Integrate SEPA’s 4 main regulatory regimes
This approach would integrate (as far as possible) the regimes relating to the regulation of water, waste, radioactive substances and pollution prevention and control. These regimes cover the bulk of SEPA’s regulatory activities, accounting for approximately 95% of SEPA’s charging income.

Sectors and Groups Affected
- Regulated businesses;
- Local communities;
- SEPA.

Benefits
For Scotland’s regulated businesses, the integrated authorisation framework will:

- Provide a simple, consistent, transparent and integrated system that is easier to use and understand;
- Make it quicker, easier and more cost effective to comply with environmental legislation;
- Provide clarity for regulated businesses about the type of authorisation they need, why, and what is required of them to comply;
- Provide a robust and risk-based approach that adopts a level of control proportionate to the risks posed by regulated activities;
- Enable the introduction of simpler, integrated authorisations (e.g. single site and corporate authorisations) replacing regime specific authorisations;
- Support innovation so that businesses can realise the financial and reputational benefits of going beyond compliance;
- Provide a more ‘level playing field’ for business by ensuring that disreputable operators or criminals are unable to obtain authorisations;
- Unlock new opportunities to streamline administrative processes and increase efficiency.

These benefits will enable SEPA to help businesses secure compliance as well as maximise the efficiency and transparency of its processes to ensure Scotland’s businesses are regulated effectively with minimised administrative burden.

Businesses holding multiple permits are likely to benefit most by moving to a single integrated authorisation. Annual savings for business from reduced charges are estimated to be £50k. Business will also benefit from reduced administration costs; case studies are planned during the consultation to help gather such information.

For Scotland’s environment and communities, the integrated authorisation framework would:
Enable SEPA to focus on the environmental risks that matter most;
Support SEPA’s work to bring all regulated businesses into compliance quickly, easily and cost effectively;
Support SEPA’s ambitions to help as many businesses as possible to go beyond compliance;
Ensure that people are properly informed and engaged in decision making, particularly communities directly impacted by regulated activities;
Improve flexibility for SEPA to undertake enforcement that secures compliance, prevents harm and requires restoration of the environment;
Gives SEPA discretion to revoke authorisations if the holder of the authorisation has ceased to be a fit and proper person, has ceased to be in control of the regulated activity, or has repeatedly failed to secure compliance with regulatory requirements or harmed the environment.

These benefits would enable SEPA to maximise the effectiveness of its regulatory activities to ensure Scotland’s environment and communities are protected from environmental harm.

For SEPA, the integrated authorisation framework would:

- Enable it to work in a more integrated and transparent way across different sites, operators and sectors;
- Enable it to support innovation and help businesses realise the benefits of going beyond compliance;
- Secure more effective environmental regulation by focussing on practical environmental protection rather than administrative processes;
- Allow it to apply a level of authorisation that is appropriate to the risk of an activity;
- Simplify legislation and processes that will in turn enable service improvement and long term costs savings through greater operational efficiency;
- Ensure it has the right enforcement tools to allow it to intervene where necessary, including on a preventative basis, to protect the environment.

These benefits would enable SEPA to maximise the efficiency and effectiveness of its regulatory activities and to focus efforts on protecting Scotland’s environment and communities from environmental harm, while facilitating innovation and supporting sustainable economic growth.

Savings for SEPA due to simplification of administrative arrangements such as procedures, enabled by the simpler regulations, and internal restructuring and simplification of the permitting service, are estimated at annual savings of £200k.

Overall the likely savings generated by this option are estimated to be in the region of £250k annually.

Costs
For most regulated businesses, there will be no additional costs as a result of the move to an integrated authorisation framework. The vast majority of existing
authorisations in place when the integrated framework comes into force will automatically transfer into the new framework, with no need for a new application.

There are, however, a small number of cases where operators would need to obtain an authorisation in a different authorisation tier, with associated costs. For instance, certain activities in the waste regime were previously automatically registered as "simple exemptions”. While it is anticipated that the vast majority of these activities will move to the notification or general binding rule tier, it is anticipated that up to 5% of existing registered "simple exemptions" (particularly some activities within Paragraphs 5, 11, 13, 14, 17 & 18 of WML 2011) will become registrations or permits in the new framework. It is estimated that the cost to businesses affected by this will be an overall one-off cost of approximately £250k.

**Comparison of costs and savings**
Overall the estimated savings (approximately £250k annually) generated by this option outweigh the estimated costs (one-off cost of approximately £250k).

**The Scottish Government recommends this Option.**

**Scottish Firms Impact Test**
The proposals outlined at Option 3 are designed to deliver the most cost-effective, streamlined and transparent legislative framework for environmental authorisations, whilst ensuring we maintain appropriate control over activities liable to have an adverse effect on Scotland’s environment. This cost-effective approach will be particularly beneficial for Scotland’s small businesses.
A series of sectoral workshops was undertaken to further identify any impacts (both positive and negative) on Scottish business and to enable Scottish firms to help shape the proposals. At these workshops, and in response to the formal consultation itself, there was widespread recognition that the expected benefits would be substantial whilst any increase in costs would be relatively low and limited to a small subset of businesses (see examples at Option 3).

For instance, of the 61 respondents to the written consultation, over 60% agreed that the recommended option would deliver the expected benefits. Others felt that until further detail was provided they were not yet able to state positively that the benefits would be delivered. 2 respondents felt that the predicted savings would not be achieved.

In summary, the recommended option would roll forward existing policy whilst ensuring the authorisation process is more cost-effective for most parties.

We invited stakeholders to provide case studies to demonstrate the impact of these changes. A number of businesses responded supporting the introduction of this Integrated Authorisation Framework; but noted that at this stage it was difficult to quantify the extent of any savings until the framework is put into practice. No cost assessments were provided.

**Competition Assessment**
The proposals are designed to support the creation of a “level playing field” for business, ensuring that law-abiding businesses are not undercut by those who deliberately or negligently harm Scotland’s environment.
Through measures such as a standardised fit and proper person (FPP) test and ensuring that most regulated activities have a named “authorised person”, SEPA will be able to ensure high standards and accountability and tackle poor performance more effectively.

This will help to ensure that legitimate business operations are able to compete fairly, and that less reputable operators do not benefit financially from non-compliance or environmental harm.

**Test run of business forms**
As part of the implementation of the integrated authorisation framework, SEPA will develop a range of new simplified forms e.g. in relation to applications for new environmental authorisations and for variations or surrender of existing authorisations. Test runs of these forms will be undertaken will regulated businesses will be undertaken to ensure that they are readily accessible and easy to use.

**Legal Aid Impact Test**
It is not envisaged that there will be any greater demand placed on the legal system by this proposal since regulated businesses/organisations will be the primary subject of the legislative changes. Furthermore, it is proposed to retain the Scottish Ministers, rather than the courts, as the appeals route. Accordingly, it is not considered that there will be any effect on individuals’ right of access to justice through availability of legal aid or possible expenditure from the legal aid fund.

The Scottish Government’s Access to Justice Team has considered this document and is in agreement with this view.

**Enforcement, sanctions and monitoring**
Consistent, flexible and proportionate enforcement is a core aspect of the Better Environmental Regulation programme.

SEPA has, and will retain, powers to monitor and enforce compliance with the requirements of authorisations, regardless of the option chosen. Options 2 and 3, however, envisage streamlining and standardising the existing enforcement arrangements associated with environmental authorisations and broadening SEPA’s ability to take enforcement action. In particular, it is proposed that SEPA be given the power to require steps to be taken:

- in response to non-compliance;
- where a regulated activity is causing, has caused, or is likely to cause, harm to the environment or human health; and
- where the authorised person no longer meets a fit and proper person requirement.

This broad power means that SEPA will be able to serve an enforcement notice whether the activity is authorised or not and without needing the notice to be related to a specific non-compliance such as breaching an authorisation condition or committing an offence. This would mean, for example, that SEPA would be able to
specify preventative and remedial steps to be taken where there is no authorisation in place, which it cannot do at present.

In addition, the proposals would also give SEPA the power to suspend or revoke an authorisation, or part thereof. These powers would be used to prevent harm to the environment or human health (e.g. to suspend abstractions during a period of drought) or, in the case of revocation, in cases involving chronic or serious non-compliance.

These proposals, together with the range of new enforcement measures already given to SEPA under the Environmental Regulation (Enforcement Measures)(Scotland) Order 2015 will ensure that SEPA has the powers it needs to deter and punish actions which damage the environment, adversely impact communities and undermine legitimate business.

Implementation and delivery plan
A formal implementation and delivery plan is currently under development; and SEPA has begun re-structuring its permitting operations to ensure the new permitting arrangements are delivered in the most cost-effective manner, and supported by appropriate guidance.

Post-implementation review
A full post-implementation review will be carried out within 10 years of the regulations creating the integrated authorisation framework coming into force.

Summary and recommendation
The Scottish Government believes that Option 3 will deliver the optimum combination of benefits for the environment, businesses and communities.

Scottish Government Briefing on the Instrument

Introduction

1. One key aim of the Regulatory Reform (Scotland) Act 2014 (“RR(S)A”) was to enable the creation of an integrated framework of environmental authorisations. The purpose of the framework is to integrate the authorisation, procedural and enforcement arrangements relating to the existing water, waste, radioactive substances and pollution prevention and control regimes, as far as the relevant European Directives allow.

2. This integrated framework will help SEPA to deliver proportionate, joined up, and outcome focussed regulation, thus enabling SEPA to focus most effort on the most important environmental risks. This will ensure more effective and efficient protection of the environment, whilst reducing the regulatory burden on business.

3. The framework will also support delivery of SEPA’s statutory purpose, which is to ensure that environmental protection is carried out in a way that, as far as
possible, supports health and wellbeing and sustainable economic growth. To deliver this purpose, SEPA is taking a new approach to regulating as set out in its regulatory strategy “One Planet Prosperity - Our Regulatory Strategy”. The framework has a key role to play in enabling SEPA to deliver its regulatory strategy.

4. This integrated authorisation framework will be delivered through regulations made under the RR(S)A. It will replace a range of existing legislation which currently implements the existing regimes by re-transposing the requirements of a number of Directives.

5. The features of the proposed integrated authorisation framework include:

- The standardisation, simplification and streamlining of the process for obtaining, modifying, transferring or surrendering an authorisation, replacing the existing regimes with, as far as possible, a common framework;
- The creation of an integrated approach to public participation in decision-making on the authorisation of regulated activities;
- An integrated “fit and proper person” test across all regulated activities; and
- The standardisation of arrangements relating to statutory notices (such as information, enforcement and revocation notices).

6. The Environmental Authorisations (Scotland) Regulations 2018 are the first step towards the delivery of this integrated framework. The Regulations put in place the common framework and introduce the technical provisions relating to the radioactive substances regime.

7. It is planned that the technical provisions for the water, pollution prevention and control, and waste regimes will be brought forward over the next year or two for integration into the framework created by these Regulations.

Current legislative and regulatory framework

8. The current legislative landscape is unnecessarily complicated. The regulatory systems for the existing regimes that SEPA is responsible for have developed and evolved largely separately, and have adopted different approaches to achieve similar outcomes.

9. Each regime has a different history:

- The water regime benefits from being the most recent having been substantially reformed in 2005; and is the model for proportionate tiers of authorisation.
- The waste regime has evolved over decades and relies on at least eight different pieces of legislation.
- The radioactive substances regime has evolved over the last 50 years and whilst it has stood the test of time well, will benefit from being updated to reflect modern approaches and practices.
- The Pollution Prevention and Control regime has already adopted a more integrated approach across environmental media, but complex signposting and interaction is needed with the other regimes. It also only deals, on the whole, with the more significant polluting activities.
10. Figure 1 below shows the different tiers of authorisation currently used in each of the existing regimes, as well as the proposed future tiers.

Figure 1 – Current and Future Authorisation Tiers

11. In addition to the complexities around authorisations, there are unnecessary differences between the procedural requirements of the existing regimes. This includes fundamental concepts such as, who holds an authorisation, determination periods, how the suitability of a person to hold an authorisation is assessed, and how the public and other interested parties are consulted in relation to applications.

12. While there has often been good reason for the differences in the existing regimes, it has resulted in a legislative framework and regulatory procedures that are inconsistent, and onerous to administer, both for SEPA and operators.

Overview of the proposed integrated authorisation framework

13. The RR(S)A 2014 enables the Scottish Ministers to make provision for, or in connection with, protecting and improving the environment, including provision for regulating environmental activities and provision for implementing European and international obligations relating to protecting and improving the environment.

14. Since 2014, the Scottish Government and SEPA have been working to simplify, streamline and integrate, as far as possible, the existing environmental authorisation
regimes into an integrated authorisation framework (as illustrated by Figure 1 above).

15. However, there are some constraints in the Directives, which are not themselves integrated. The integrated authorisation framework has been developed to be as integrated as possible but there are some circumstances and activities where specific directive requirements must be applied.

Benefits of an integrated authorisation framework

16. The framework is designed to standardise, simplify and streamline the process for complying with environmental legislation in Scotland, while also improving transparency and engagement in decision making.

17. For Scotland’s environment and communities, the integrated authorisation framework will:

- Enable SEPA to focus on the environmental risks that matter most;
- Support SEPA’s efforts to bring all regulated businesses into compliance quickly, easily and cost-effectively;
- Ensure that people are properly informed and engaged in decision making, particularly communities directly impacted by regulated activities;
- Improve flexibility for SEPA to undertake enforcement that secures compliance, prevents harm and requires restoration of the environment; and
- Give SEPA discretion to revoke authorisations if the holder of the authorisation has ceased to be a fit and proper person, has repeatedly failed to secure compliance with regulatory requirements, or has harmed the environment.

18. These benefits will enable SEPA to maximise the effectiveness of its regulatory activities to ensure Scotland’s environment and communities are protected from environmental harm.

19. For Scotland’s regulated businesses, the integrated authorisation framework will:

- Provide a simple, consistent, transparent and integrated system that is easier to use and understand;
- Make it quicker, easier and more cost effective to comply with environmental legislation;
- Provide clarity for regulated businesses about the type of authorisation they need, why and what is required of them to comply;
- Provide a robust and risk-based approach that adopts a level of control proportionate to the risks posed by regulated activities;
- Enable the introduction of simpler, integrated authorisations (e.g. single site and corporate authorisations) replacing regime specific authorisations;
- Support innovation so that businesses can realise the financial and reputational benefits of going beyond compliance;
- Provide a more ‘level playing field’ for business by ensuring that disreputable operators or criminals are unable to obtain authorisations; and
Unlock new opportunities to streamline administrative processes and increase efficiency.

20. These benefits will enable SEPA to help businesses secure compliance as well as maximise the efficiency and transparency of its processes to ensure Scotland’s businesses are regulated effectively with minimised administrative burden.

21. Those currently regulated under more than one regime are likely to see the biggest benefits as a result of integrating regulatory requirements. Those that are currently only regulated under the older waste or radioactive substances regimes will also benefit from the simplification and modernisation of these regimes. Those currently regulated under PPC will benefit from simplification and SEPA’s ability to take a more proportionate approach by using other types of authorisation than permits, where appropriate. Those that are currently only regulated under the water regime may not see direct benefits but these changes deliver wider benefits across all activities.

22. For SEPA, the integrated authorisation framework will:

- Enable it to work in a more integrated and transparent way across different sites, operators and sectors;
- Enable it to support innovation and help businesses realise the benefits of going beyond compliance;
- Secure more effective environmental regulation by focussing on practical environmental protection rather than administrative processes;
- Allow it to apply a level of authorisation that is appropriate to the risk of an activity;
- Simplify legislation and processes that will in turn enable service improvement and long term costs savings through greater operational efficiency; and
- Ensure it has the right enforcement tools to allow it to intervene where necessary, including on a preventative basis, to protect the environment.

23. These benefits will enable SEPA to maximise the efficiency and effectiveness of its regulatory activities and to focus efforts on protecting Scotland’s environment and communities from environmental harm, while facilitating innovation and supporting sustainable economic growth.

Consultation

24. Proposals for this integrated authorisation framework have been subject to several public consultations, such as the joint Scottish Government–SEPA consultation on Proposals for an Integrated Framework of Environmental Regulation in 2012. This generated strong and widespread support, with proposals for simpler, more risk-based environmental regulation supported by 92% of respondents.

25. In January 2017, a consultation on a more detailed set of proposals was published. 61 responses were received. The vast majority of respondents (over 80%)
agreed with the proposals, and feedback was taken on board to inform the
development of the draft Regulations.

26. The draft Regulations in turn were subject to public consultation during September-November 2017. This time 29 responses were received. The bulk of the detailed provisions set out in the draft Regulations were widely supported. Some comments on specific points of detail were made, and these have been taken into account in preparing the final draft of the Regulations which is currently expected to come forward in May 2018.

Environmental Quality Division
Scottish Government
February 2018
## Basic Safety Standards Directive Transposition Table

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| 1       | **Subject matter**  
This Directive establishes uniform basic safety standards for the protection of the health of individuals subject to occupational, medical and public exposures against the dangers arising from ionising radiation |
|         | Transposition |
|         | Nothing specific to transpose |
| 2(1)    | **Scope**  
1. This Directive applies to any planned, existing or emergency exposure situation which involves a risk from exposure to ionising radiation which cannot be disregarded from a radiation protection point of view or with regard to the environment in view of long-term human health protection. |
|         | Transposition |
|         | Nothing specific to transpose |
| 2(2)    | 2. This Directive applies in particular to:  
(a) the manufacture, production, processing, handling, disposal, use, storage, holding, transport, import to, and export from the Community of radioactive material;  
(b) the manufacture and the operation of electrical equipment emitting ionising radiation and containing components operating at a potential difference of more than 5 kilovolt (kV);  
(c) human activities which involve the presence of natural radiation sources that lead to a significant increase in the exposure of workers or members of the public, in particular:  
(i) the operation of aircraft and spacecraft, in relation to the exposure of crews;  
(ii) the processing of materials with naturally-occurring radionuclides;  
(d) the exposure of workers or members of the public to |
<p>|         | Transposition |
|         | Nothing specific to transpose |</p>
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<td>indoor radon, the external exposure from building materials and cases of lasting exposure resulting from the after-effects of an emergency or a past human activity. (e) the preparedness for, the planning of response to and the management of emergency exposure situations that are deemed to warrant measures to protect the health of members of the public or workers.</td>
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<td>3</td>
<td><strong>Exclusion from the scope</strong>&lt;br&gt;This Directive shall not apply to: (a) exposure to the natural level of radiation, such as radionuclides contained in the human body and cosmic radiation prevailing at ground level; (b) exposure of members of the public or workers other than air or spacecrew to cosmic radiation in flight or in space; (c) aboveground exposure to radionuclides present in the undisturbed earth's crust.</td>
<td>Nothing specific to transpose</td>
</tr>
<tr>
<td>4</td>
<td><strong>Definitions</strong></td>
<td>The Environmental Authorisations (Scotland) Regulations 2018 (EA(S)R) Schedule 8 paragraph 26(3)</td>
</tr>
<tr>
<td>4(25)</td>
<td>effective dose</td>
<td>EA(S)R Schedule 8 paragraph 26(3)</td>
</tr>
<tr>
<td>4(33)</td>
<td>equivalent dose</td>
<td>EA(S)R Schedule 8 paragraph 5</td>
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<td>4(41)</td>
<td>high-activity sealed source</td>
<td>EA(S)R Schedule 8 paragraph 3</td>
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<tr>
<td>4(48)</td>
<td>medical exposure</td>
<td>EA(S)R Schedule 8 paragraph 3</td>
</tr>
<tr>
<td>4(58)</td>
<td>occupational exposure</td>
<td>EA(S)R Schedule 8 paragraph 3</td>
</tr>
<tr>
<td>4(60)</td>
<td>orphan source</td>
<td>EA(S)R Schedule 8 paragraph 3 “orphan source” means a source containing radioactive material or radioactive waste which is not being held within the scope of an authorisation [slightly modified from BSSD definition]</td>
</tr>
<tr>
<td>4(69)</td>
<td>public exposure</td>
<td>EA(S)R Schedule 8 paragraph 3</td>
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<td>4(73)</td>
<td>radiation protection expert</td>
<td>EA(S)R Schedule 8 paragraph 3</td>
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<tr>
<td>4(90)</td>
<td>sealed source</td>
<td>EA(S)R Schedule 8 paragraph 5</td>
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<td>5</td>
<td><strong>General principles of radiation protection</strong>&lt;br&gt;Member States shall establish legal requirements and an appropriate regime of regulatory control which, for all exposure situations, reflect a system of radiation protection based on the principles of justification, optimisation and dose limitation:&lt;br&gt;(a) Justification: Decisions introducing a practice shall be justified in the sense that such decisions shall be taken with the intent to ensure that the individual or societal benefit resulting from the practice outweighs the health detriment that it may cause. Decisions introducing or altering an exposure pathway for existing and emergency exposure situations shall be justified in the sense that they should do more good than harm.</td>
<td>Transposed through the Justification of Practices Involving Ionising Radiation Regulations 2004</td>
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<td>(b) Optimisation: Radiation protection of individuals subject to public or occupational exposure shall be optimised with the aim of keeping the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed as low as reasonably achievable taking into account the current state of technical knowledge and economic and societal factors. The optimisation of the protection of individuals subject to medical exposure shall apply to the magnitude of individual doses and be consistent with the medical purpose of the exposure, as described in Article 56. This principle shall be applied not only in terms of effective dose but also, where appropriate, in terms of equivalent doses, as a precautionary measure to allow for uncertainties as to health detriment below the threshold</td>
<td>EA(S)R Schedule 8 paragraph 26(1)</td>
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<td>(c) Dose limitation: In planned exposure situations, the sum of doses to an individual shall not exceed the dose limits laid down for occupational exposure or public exposure. Dose limits shall not apply to medical exposures.</td>
<td>EA(S)R Schedule 8 paragraph 27</td>
<td></td>
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| 6(1) | **Dose constraints for occupational, public, and medical exposure**  
1. Member States shall ensure that, where appropriate, dose constraints are established for the purpose of prospective optimisation of protection:  
(a) for occupational exposure, the dose constraint shall be established as an operational tool for optimisation by the undertaking under the general supervision of the competent authority. In the case of outside workers the dose constraint shall be established in cooperation between the employer and the undertaking.  
(b) for public exposure, the dose constraint shall be set for the individual dose that members of the public receive from the planned operation of a specified radiation source. The competent authority shall ensure that the constraints are consistent with the dose limit for the sum of doses to the same individual from all authorised practices.  
(c) for medical exposure, dose constraints shall apply only with regard to the protection of carers and comforters and volunteers participating in medical or biomedical research. | Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017 |
<p>| 6(2) | 2. Dose constraints shall be established in terms of individual effective or equivalent doses over a defined appropriate time period. | EA(S)R Schedule 8 paragraph 26 |</p>
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| 7(1)   | **Reference levels**  
1. Member States shall ensure that reference levels are established for emergency and existing exposure situations. Optimisation of protection shall give priority to exposures above the reference level and shall continue to be implemented below the reference level. | Ionising Radiation (Basic Safety Standards)(Miscellaneous Provisions) Regulations 2018 |
| 7(2)   | 2. The values chosen for reference levels shall depend upon the type of exposure situation. The choices of reference levels shall take into account both radiological protection requirements and societal criteria. For public exposure the establishment of reference levels shall take into account the range of reference levels set out in Annex I. | Ionising Radiation (Basic Safety Standards)(Miscellaneous Provisions) Regulations 2018 |
| 7(3)   | 3. For existing exposure situations involving exposure to radon, the reference levels shall be set in terms of radon activity concentration in air as specified in Article 74 for members of the public and Article 54 for workers. | Ionising Radiation (Basic Safety Standards)(Miscellaneous Provisions) Regulations 2018 |
| 8      | **Age limit for exposed workers** | Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017 |
| 9      | **Dose limits for occupational exposure** | Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017. |
| 10     | **Protection of pregnant and breastfeeding workers** | Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017. |
| 11     | **Dose limits for apprentices and students** | Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017. |
| 12(1)  | **Dose limits for public exposure**  
1. Member States shall ensure that the dose limits for public exposure shall apply to the sum of annual exposures of a member of the public resulting from all authorised practices. | EA(S)R Schedule 8 paragraph 26 |
<p>| 12(2)  | 2. Member States shall set the limit on the effective dose | EA(S)R Schedule 8 paragraph 26(2)(a) |</p>
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<td>12(3)</td>
<td>3. In addition to the dose limit referred to in paragraph 2, the following limits on the equivalent dose shall apply: (a) the limit on the equivalent dose for the lens of the eye shall be 15 mSv in a year; (b) the limit on the equivalent dose for the skin shall be 50 mSv in a year, averaged over any 1 cm² area of skin, regardless of the area exposed.</td>
<td>EA(S)R Schedule 8 paragraph 26(2)(b) and (c)</td>
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</table>
| 13      | **Estimation of the effective and equivalent dose**  
For the estimation of effective and equivalent doses, the appropriate standard values and relationships shall be used. For external radiation, the operational quantities defined in section 2.3 of ICRP Publication 116 shall be used. | EA(S)R Schedule 8 paragraph 26(4)                                             |
| 14(1)   | **General responsibilities for the education, training and provision of information**  
1. Member States shall establish an adequate legislative and administrative framework ensuring the provision of appropriate radiation protection education, training and information to all individuals whose tasks require specific competences in radiation protection. The provision of training and information shall be repeated at appropriate intervals and documented. | Met by section 58 of the Health and Social Care Act 2012 which puts a duty on Scottish Ministers to take steps to provide training, information and advice, technical service etc. |
<p>| 14(2)   | 2. Member States shall ensure that arrangements are made for the establishment of education, training and retraining to allow the recognition of radiation protection experts and medical physics experts, as well as occupational health services and dosimetry services, in relation to the type of practice. | Met by S58 of the Health and Social Care Act 2012. Radioactive Waste Advisor (RWA) scheme requires demonstration of competence and provides for the recognition of experts, but does not arrange training. |
| 14(3)   | 3. Member States may make arrangements for the establishment of education, training and retraining to | Not currently provided for in national legislation so therefore not required. |</p>
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<td>15</td>
<td><strong>Training of exposed workers and information provided to them</strong></td>
<td>Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017</td>
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<tr>
<td>15(5)</td>
<td>5. In addition to the information and training in the field of radiation protection as specified in paragraphs 1, 2, 3 and 4, Member States shall require that the undertaking responsible for high-activity sealed sources shall ensure that such training includes specific requirements for the safe management and control of high-activity sealed sources with a view to preparing the relevant workers adequately for any events affecting the radiation protection. The information and training shall place particular emphasis on the necessary safety requirements and shall contain specific information on the possible consequences of the loss of adequate control of high-activity sealed sources.</td>
<td>Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017</td>
</tr>
</tbody>
</table>
| 16 | **Information and training of workers potentially exposed to orphan sources**  
1. Member States shall ensure that the management of installations where orphan sources are most likely to be found or processed, including large metal scrap yards and major metal scrap recycling installations, and in significant nodal transit points, are informed of the possibility that they may be confronted with a source.  
2. Member States shall encourage the management of installations referred to in paragraph 1 to ensure that where workers in their installation may be confronted with a source, they are:  
(a) advised and trained in the visual detection of sources | Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017 |
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<td>17</td>
<td><strong>Prior information and training for emergency workers</strong></td>
<td>Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017</td>
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<tr>
<td>18</td>
<td><strong>Education, information and training in the field of medical exposure</strong></td>
<td>Medical exposure regulated by DoH and relevant DA departments under the Ionising Radiation (Medical Exposure) Regulations 2018</td>
</tr>
<tr>
<td>19</td>
<td><strong>Justification of practices</strong></td>
<td>Regulated on a UK-wide basis under the Justification of Practices involving ionising radiation regulations 2004</td>
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<tr>
<td>20</td>
<td><strong>Practices involving consumer products</strong></td>
<td></td>
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<td>21</td>
<td><strong>Prohibition of practices</strong></td>
<td></td>
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<tr>
<td>22</td>
<td><strong>Practices involving the deliberate exposure of humans for non-medical imaging purposes</strong></td>
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| 23      | **Identification of practices involving naturally-occurring radioactive material**  
Member States shall ensure the identification of classes or types of practice involving naturally-occurring radioactive material and leading to exposure of workers or members of the public which cannot be disregarded from a radiation protection point of view. Such identification shall be carried out by appropriate means taking into account industrial sectors listed in Annex VI. | EA(S)R Schedule 8 paragraph 6(3) [Geothermal energy production added as a new NORM industrial activity and “water treatment associated with provision of drinking water” separated from “the remediation of contamination from NORM industrial activities”]. |
<p>| 24(1)   | <strong>Graded approach to regulatory control</strong> 1. Member States shall require practices to be subject to regulatory control for the purpose of radiation protection, by way of notification, authorisation and appropriate inspections, commensurate with the magnitude and likelihood of exposures resulting from the practice, and | EA(S)R tiers of authorisation                                                                                                                                                                                                      |</p>
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<td>commensurate with the impact that regulatory control may have in reducing such exposures or improving radiological safety.</td>
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<tr>
<td>24(2)</td>
<td>2. Without prejudice to Articles 27 and 28, where appropriate, and in accordance with the general exemption criteria set out in Annex VII, regulatory control may be limited to notification and an appropriate frequency of inspections. For this purpose, Member States may establish general exemptions or allow the competent authority to decide to exempt notified practices from the requirement of authorisation on the basis of the general criteria specified in Annex VII; in the case of moderate amounts of material, as specified by Member States, the activity concentration values laid down in Annex VII, Table B, column 2 may be used for this purpose.</td>
<td>EA(S)R tiers of authorisation</td>
</tr>
<tr>
<td>24(3)</td>
<td>3. Notified practices which are not exempted from authorisation shall be subject to regulatory control through registration or licensing.</td>
<td>EA(S)R tiers of authorisation</td>
</tr>
</tbody>
</table>
| 25(1)   | **Notification**  
1. Member States shall ensure that notification is required for all justified practices, including those identified according to Article 23. The notification shall be made prior to the practice commencing or, for existing practices, as soon as possible once this requirement is applicable. For practices subject to notification, Member States shall specify the information to be provided in conjunction with the notification. Where an application for an authorisation is submitted, no separate notification is needed. Practices may be exempted from notification, as specified | EA(S)R tiers of authorisation |
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<tr>
<td>25(2)</td>
<td>2. Member States shall ensure that notification is required for workplaces specified in Article 54(3), and for existing exposure situations that are managed as a planned exposure situation, as specified in Article 100(3).</td>
<td>Occupational exposure regulated by the HSE under the Ionising Radiations Regulations 2017</td>
</tr>
<tr>
<td>25(3)</td>
<td>3. Notwithstanding the exemption criteria laid down in Article 26, in situations identified by Member States where there is concern that a practice identified in accordance with Article 23 may lead to the presence of naturally-occurring radionuclides in water liable to affect the quality of drinking water supplies or affect any other exposure pathways, so as to be of concern from a radiation protection point of view, the competent authority may require that the practice be subject to notification.</td>
<td>Optional requirement</td>
</tr>
<tr>
<td>25(4)</td>
<td>4. Human activities involving radioactively contaminated materials resulting from authorised releases or materials cleared in accordance with Article 30 shall not be managed as a planned exposure situation and, hence, are not required to be notified.</td>
<td>N/A</td>
</tr>
</tbody>
</table>
| 26(1)   | **Exemption from notification**  
1. Member States may decide that justified practices involving the following do not need to be notified:  
(a) radioactive materials where the quantities of the activity involved do not exceed in total the exemption values set out in Table B, column 3, of Annex VII, or higher values that, for specific applications, are approved by the competent authority and satisfy the general exemption and clearance criteria set out in Annex VII; or  
(b) without prejudice to Article 25(4), radioactive materials where the activity concentrations do not exceed the exemption values set out in Table A of Annex VII, or | EA(S)R Schedule 9                                                                                                                                                                                                                                                                                                                                                                                        |
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<td>higher values that, for specific applications, are approved by the competent authority and satisfy the general exemption and clearance criteria set out in Annex VII; (c) apparatus containing a sealed source, provided that: (i) the apparatus is of a type approved by the competent authority; (ii) the apparatus does not cause, in normal operating conditions, a dose rate exceeding 1 μSv h⁻¹ at a distance of 0.1 m from any accessible surface; and (iii) conditions for recycling or disposal have been specified by the competent authority; or</td>
<td>Does not include radioactive substances so is not regulated by SEPA, will be regulated by the HSE under the Ionising Radiations Regulations 2017</td>
</tr>
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<td>(d) any electrical apparatus provided that: (i) it is a cathode ray tube intended for the display of visual images, or other electrical apparatus operating at a potential difference not exceeding 30 kilo volt (kV), or it is of a type approved by the competent authority; and (ii) it does not cause, in normal operating conditions, a dose rate exceeding 1 μSv h⁻¹ at a distance of 0.1 m from any accessible surface.</td>
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<tr>
<td>26(2)</td>
<td>2. Member States may exempt specific types of practices from the notification requirement subject to compliance with the general exemption criteria established in point 3 of Annex VII, on the basis of an assessment showing that exemption is the best option.</td>
<td>EA(S)R Schedule 9</td>
</tr>
<tr>
<td>27(1)</td>
<td><strong>Registration or licensing</strong> 1. Member States shall require either registration or licensing of the following practices: (a) the operation of radiation generators or accelerators or radioactive sources for medical exposures or for non-medical imaging purposes;</td>
<td>Medical and occupational exposures, regulated by DoH and relevant DA departments or HSE under the Ionising Radiations Regulations 2017 and the Ionising Radiation (Medical Exposure) Regulations 2018</td>
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<tr>
<td>(b) the operation of radiation generators or accelerators, except electron microscopes, or radioactive sources for purposes not covered by point (a)</td>
<td>Optional requirement</td>
<td></td>
</tr>
<tr>
<td>27(2)</td>
<td>2. Member States may require registration or licensing for other types of practices.</td>
<td>Optional requirement</td>
</tr>
<tr>
<td>27(3)</td>
<td>3. The regulatory decision to submit types of practices to either registration or licensing may be based on regulatory experience, taking into account the magnitude of expected or potential doses, as well as the complexity of the practice.</td>
<td>Optional requirement</td>
</tr>
<tr>
<td>28</td>
<td><strong>Licensing</strong>&lt;br&gt;Member States shall require licensing for the following practices:&lt;br&gt;(a) the deliberate administration of radioactive substances to persons and, in so far as the radiation protection of human beings is concerned, animals for the purpose of medical or veterinary diagnosis, treatment or research;&lt;br&gt;(b) the operation and decommissioning of any nuclear facility and the exploitation and closure of uranium mines;&lt;br&gt;(c) the deliberate addition of radioactive substances in the production or manufacture of consumer products or other products, including medicinal products, and the import of such products;&lt;br&gt;(d) any practice involving a high-activity sealed source;&lt;br&gt;(e) the operation, decommissioning and closure of any facility for the long term storage or disposal of radioactive waste, including facilities managing radioactive waste for this purpose;&lt;br&gt;(f) practices discharging significant amounts of radioactive material with airborne or liquid effluent into the environment.</td>
<td>EA(S)R Schedule 8 paragraph 14 transposes this Article where relevant to SEPA's functions</td>
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| 29(1)  | **Authorisation procedure**  
1. For authorisation purposes, Member States shall require the provision of information relevant to radiation protection that is commensurate with the nature of the practice and the radiological risks involved. | EA(S)R Schedule 8 paragraph 15 |
| 29(2)  | 2. In the case of licensing and when determining what information must be provided under paragraph 1, Member States shall take into account the indicative list in Annex IX. | EA(S)R Schedule 8 paragraph 15(2) |
| 29(3)  | 3. A licence shall include, as appropriate, specific conditions and reference to requirements in national legislation so as to ensure that the elements of the licence are legally enforceable, and impose appropriate restrictions on the operational limits and conditions of operation. National legislation or the specific conditions shall also require, when appropriate, the formal and documented implementation of the principle of optimisation. | EA(S)R Regulations 20, 21 and 22 |
| 29(4)  | 4. Where applicable, national legislation or a licence shall include conditions on the discharge of radioactive effluent, in accordance with the requirements laid down in Chapter VII for the authorisation of the release of radioactive effluent into the environment. | EA(S)R Schedule 8 paragraph 21(1) |
| 30(1)  | **Release from regulatory control**  
1. Member States shall ensure that the disposal, recycling or reuse of radioactive materials arising from any authorised practice is subject to authorisation. | EA(S)R Schedule 8 paragraph 14 |
<p>| 30(2)  | 2. Materials for disposal, recycling or reuse may be released from regulatory control provided that the activity concentrations: | Forms part of the definition of radioactive material and radioactive waste. Table A of Annex VII is replicated as Table 2 in Schedule 8 and this table is referred to in |</p>
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<td>(a) for solid material do not exceed the clearance levels set out in Table A of Annex VII; or (b) comply with specific clearance levels and associated requirements for specific materials or for materials originating from specific types of practices; these specific clearance levels shall be established in national legislation or by the national competent authority, following the general exemption and clearance criteria set out in Annex VII, and taking into account technical guidance provided by the Community.</td>
<td>EA(S)R Schedule 8 paragraphs 6, 7 and 8.</td>
<td></td>
</tr>
<tr>
<td>30(3)</td>
<td>3. Member States shall ensure that for the clearance of materials containing naturally-occurring radionuclides, where these result from authorised practices in which natural radionuclides are processed for their radioactive, fissile or fertile properties, the clearance levels comply with the dose criteria for clearance of materials containing artificial radionuclides.</td>
<td>EA(S)R Schedule 8 Table 1</td>
</tr>
<tr>
<td>30(4)</td>
<td>4. Member States shall not permit the deliberate dilution of radioactive materials for the purpose of them being released from regulatory control. The mixing of materials that takes place in normal operations where radioactivity is not a consideration is not subject to this prohibition. The Competent Authority may authorise, in specific circumstances, the mixing of radioactive and non-radioactive materials for the purposes of re-use or recycling.</td>
<td>EA(S)R Schedule 8 paragraph 13</td>
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| 65(1)  | **Operational protection of members of the public**  
1. Member States shall ensure that the operational protection of members of the public in normal circumstances from practices subject to licensing shall include, for relevant facilities, the following:  
(a) examination and approval of the proposed siting of the facility from a radiation protection point of view, taking into account relevant demographic, meteorological, geological, hydrological and ecological conditions;  
(b) acceptance into service of the facility subject to adequate protection being provided against any exposure or radioactive contamination liable to extend beyond the perimeter of the facility or radioactive contamination liable to extend to the ground beneath the facility;  
(c) examination and approval of plans for the discharge of radioactive effluents;  
(d) measures to control the access of members of the public to the facility. | Siting is controlled by planning legislation.  
EA(S)R Schedule 8 paragraph 20  
EA(S)R Schedule 8 paragraph 21  
For nuclear licensed sites, access is regulated by the Office of the Nuclear Regulator and is a reserved matter. |
| 65(2)  | 2. The competent authority shall where appropriate establish authorised limits as part of the discharge authorisation and conditions for discharging radioactive effluents which shall:  
(a) take into account the results of the optimisation of radiation protection;  
(b) reflect good practice in the operation of similar facilities.  
In addition, these discharge authorisations shall take into account, where appropriate, the results of a generic screening assessment based on internationally recognised scientific guidance, where such an assessment has been required by the Member State, to | EA(S)R Schedule 8 paragraph 21(2) |
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<td>65(3)</td>
<td>3. For practices subject to registration, Member States shall ensure the protection of members of the public in normal circumstances through appropriate national regulations and guidance.</td>
<td>EA(S)R Schedule 8</td>
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<tr>
<td>66(1)</td>
<td><strong>Estimation of doses to the members of the public</strong>&lt;br&gt;1. Member States shall ensure that arrangements are made for the estimation of doses to members of the public from authorised practices. The extent of such arrangements shall be proportionate to the exposure risk involved.</td>
<td>EA(S)R Schedule 8 paragraph 28</td>
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<tr>
<td>66(2)</td>
<td>2. Member States shall ensure the identification of practices for which an assessment of doses to members of the public shall be carried out. Member States shall specify those practices for which this assessment needs to be carried out in a realistic way and those for which a screening assessment is sufficient.</td>
<td>EA(S)R Schedule 8 paragraph 29</td>
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<tr>
<td>66(3)</td>
<td>3. For the realistic assessment of doses to the members of the public, the competent authority shall:&lt;br&gt;(a) decide on a reasonable extent of surveys to be conducted and information to be taken into account in order to identify the representative person, taking into account the effective pathways for transmission of the radioactive substances;&lt;br&gt;(b) decide on a reasonable frequency of monitoring of the relevant parameters as determined in point (a);&lt;br&gt;(c) ensure that the estimates of doses to the representative person include:&lt;br&gt;i) assessment of the doses due to external radiation, indicating, where appropriate, the type of the radiation in...</td>
<td>EA(S)R Schedule 8 paragraph 30</td>
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<td>67(1)</td>
<td>Monitoring of radioactive discharges 1. Member States shall require the undertaking responsible for practices where a discharge authorisation is granted to monitor appropriately or where appropriate evaluate the radioactive airborne or liquid discharges into the environment in normal operation and to report the results to the competent authority.</td>
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<td>67(2)</td>
<td>2. Member States shall require any undertaking responsible for a nuclear power reactor or reprocessing plant to monitor radioactive discharges and report them in accordance with standardised information.</td>
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<td>68</td>
<td>Tasks for the undertaking Member States shall require the undertaking to carry out the following tasks: (a) achieve and maintain an optimal level of protection of members of the public; (b) accept into service adequate equipment and</td>
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|          | (a) occupational health services;  
|          | (b) dosimetry services;  
|          | (c) radiation protection experts;  
|          | (d) medical physics experts.  
|          | Member States shall ensure that the necessary arrangements are in place to ensure the continuity of expertise of these services and experts. If appropriate, Member States may establish the arrangements for the recognition of radiation protection officers. |

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<td>79(2)</td>
<td>2. Member States shall specify the recognition requirements and communicate them to the Commission.</td>
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<td>Administrative requirement</td>
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<td>79(3)</td>
<td>3. The Commission shall make the information received in accordance with paragraph 2 available to the Member States.</td>
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<td>Commission obligation</td>
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| 82(1)   | Radiation protection expert  
|         | 1. Member State shall ensure that the radiation protection expert gives competent advice to the undertaking on matters relating to compliance with applicable legal requirements, in respect of occupational and public exposure. |
|         | Through the Radioactive Waste Adviser scheme operated by the UK environment agencies. |

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| 82(2)   | 2. The advice of the radiation protection expert shall cover, where relevant, but not be limited to, the following:  
|         | (a) optimisation and establishment of appropriate dose constraints;  
<p>|         | (b) plans for new installations and the acceptance into service of new or modified radiation sources in relation to any engineering controls, design features, safety features and warning devices relevant to radiation protection; |
|         | Through the Radioactive Waste Adviser scheme operated by the UK environment agencies. |</p>
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<td>categorisation of controlled and supervised areas;</td>
<td>Through the Radioactive Waste Adviser scheme operated by the UK environment agencies.</td>
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<td>(d)</td>
<td>classification of workers;</td>
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<td>(e)</td>
<td>workplace and individual monitoring programmes and related personal dosimetry;</td>
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<td>(f)</td>
<td>appropriate radiation monitoring instrumentation;</td>
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<td>quality assurance;</td>
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<td>(h)</td>
<td>environmental monitoring programme;</td>
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<td>(i)</td>
<td>arrangements for radioactive waste management;</td>
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<td>arrangements for prevention of accidents and incidents;</td>
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<td>training and retraining programmes for exposed workers;</td>
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<td>investigation and analysis of accidents and incidents and appropriate remedial actions;</td>
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<td>employment conditions for pregnant and breastfeeding workers;</td>
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<td>(o)</td>
<td>preparation of appropriate documentation such as prior risk assessments and written procedures;</td>
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| 82(3)   | 3. The radiation protection expert shall, where appropriate, liaise with the medical physics expert. | |
| 82(4)   | 4. The radiation protection expert may be assigned, if provided for in national legislation, the tasks of radiation protection of workers and members of the public. | Not provided for in national legislation therefore no need for transposition |

<p>| 83      | <strong>Medical physics expert</strong> | Medical exposures regulated by DoH and relevant DA departments under IRMER 18 |
| 84      | <strong>Radiation protection officer</strong> | Occupational exposures, regulated by HSE under IRR17 |
| 85(1)   | <strong>General requirements for unsealed sources</strong> | EA(S)R Schedule 8 paragraph 20(e) |
|         | 1. Member States shall ensure that arrangements are made for keeping control of unsealed sources with regard | |</p>
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<td>85(2)</td>
<td>2. Member States shall require the undertaking, as appropriate and to the extent possible, to keep records of unsealed sources under its responsibility, including location, transfer and disposal.</td>
<td>EA(S)R Schedule 8 paragraph 20(f)</td>
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<td>85(3)</td>
<td>3. Member States shall require each undertaking holding an unsealed radioactive source to notify the competent authority promptly of any loss, theft, significant spill, or unauthorised use or release.</td>
<td>EA(S)R Schedule 8 paragraph 20(h)</td>
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| 86(1)   | **General requirements for sealed sources**  
1. Member States shall ensure that arrangements are made for keeping control of sealed sources with regard to their location, use and, when no longer required, their recycling or disposal. | EA(S)R Schedule 8 paragraph 23 |
| 86(2)   | 2. Member States shall require the undertaking to keep records of all sealed sources under its responsibility, including location, transfer and disposal. | EA(S)R Schedule 8 paragraph 25 |
| 86(3)   | 3. Member States shall establish a system to enable them to be adequately informed of any transfer of high activity sealed sources and where necessary individual transfers of sealed sources. | EA(S)R Schedule 8 paragraph 33 |
| 86(4)   | 4. Member States shall require each undertaking holding a sealed source to notify the competent authority promptly of any loss, significant leakage, theft or unauthorised use of a sealed source. | EA(S)R Schedule 8 paragraph 20(j) |
| 87      | **Requirements for control of high-activity sealed sources**  
Member States shall ensure that, before issuing authorisation for practices involving a high-activity sealed source: | EA(S)R Schedule 8 paragraph 18(1) |
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<td>(a) adequate arrangements have been made for the safe management and control of sources, including when they become disused sources. Such arrangements may provide for the transfer of disused sources to the supplier or their placement in a disposal or storage facility or an obligation for the manufacturer or the supplier to receive them; (b) adequate provision, by way of a financial security or any other equivalent means appropriate for the source in question, has been made for the safe management of sources when they become disused sources, including the case where the undertaking becomes insolvent or ceases its activities.</td>
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| 88      | **Specific requirements for licensing of high-activity sealed sources**  
In addition to the general licensing requirements set out in Chapter V, Member States shall ensure that the licence for a practice involving a high-activity sealed source includes, but does not have to be limited to:  
(a) responsibilities;  
(b) minimum staff competencies, including information and training;  
(c) minimum performance criteria for the source, source container and additional equipment;  
(d) requirements for emergency procedures and communication links;  
(e) work procedures to be followed;  
(f) maintenance of equipment, sources and containers;  
(g) adequate management of disused sources, including agreements regarding the transfer, if appropriate, of disused sources to a manufacturer, a supplier, another |
<p>|         | EA(S)R Schedule 8 paragraph 23(c)                                                                                                                                                                          |</p>
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<td><strong>Record keeping by the undertaking</strong>&lt;br&gt;Member States shall require that the records for high-activity sealed sources include the information set out in Annex XIV and that the undertaking provides the competent authority with an electronic or written copy of all or part of these records upon request and at least under the following conditions:&lt;br&gt;(a) without undue delay, at the time of the establishment of such records, which shall be as soon as is reasonably practicable after the source is acquired;&lt;br&gt;(b) at intervals to be determined by Member States;&lt;br&gt;(c) if the situation indicated on the information sheet has changed;&lt;br&gt;(d) without undue delay upon the closure of the records for a specific source when the undertaking no longer holds this source, whereby the name of the undertaking or waste disposal or storage facility to which the source is transferred shall be included;&lt;br&gt;(e) without undue delay upon the closure of such records when the undertaking no longer holds any sources.&lt;br&gt;The undertaking's records shall be available for inspection by the competent authority.</td>
<td>EA(S)R Schedule 8 paragraph 25</td>
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<td><strong>Record keeping by the competent authority</strong>&lt;br&gt;Member States shall ensure that the competent authority keeps records of any undertaking authorised to perform practices with high-activity sealed sources and of the high-activity sealed sources held. These records shall include the radionuclide involved, the activity at the time of manufacture or, if this activity is not known, the activity</td>
<td>EA(S)R Schedule 8 paragraph 32</td>
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| 91(1)  | **Control of high-activity sealed sources**  
1. Member States shall require that the undertaking carrying out activities involving high activity sealed sources complies with requirements set out in Annex XV. | EA(S)R Schedule 8 paragraph 23(d) |
| 91(2)  | 2. Member States shall require that the manufacturer, the supplier, and each undertaking ensures that high-activity sealed sources and containers comply with the requirements for identification and marking as set out in Annex XVI. | EA(S)R Schedule 8 paragraph 24 |
| 92(1)  | **Detection of orphan sources**  
1. Member States shall ensure that arrangements are made for:  
(a) raising general awareness of the possible occurrence of orphan sources and associated hazards; and  
(b) issuing guidance for persons who suspect or have knowledge of the presence of an orphan source on informing the competent authority and on the actions to be taken. | Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018 |
<p>| 92(2)  | 2. Member States shall encourage the establishment of systems aimed at detecting orphan sources in places such as large metal scrap yards and major metal scrap recycling installations where orphan sources may generally be encountered, or at significant nodal transit points, wherever appropriate. | EA(S)R Schedule 5 Part 2 |
| 92(3)  | 3. Member States shall ensure that specialised technical advice and assistance is promptly made available to | EA(S)R Schedule 8 paragraph 34 |</p>
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<td>persons who suspect the presence of an orphan source and who are not normally involved in operations subject to radiation protection requirements. The primary aim of advice and assistance shall be the protection of workers and members of the public from radiation and the safety of the source.</td>
<td>Transposition</td>
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| 93(1)   | **Metal contamination**  
1. Member States shall encourage the establishment of systems to detect the presence of radioactive contamination in metal products imported from third countries, in places such as at major metal importing installations or at significant nodal transit points. | EA(S)R Schedule 5 Part 2 |
| 93(2)   | 2. Member States shall require that the management of a metal scrap recycling installation promptly informs the competent authority if it suspects or has knowledge of any melting of or other metallurgical operation on an orphan source and shall require that the contaminated materials are not used, placed on the market or disposed of without the involvement of the competent authority. | EA(S)R Schedule 5 Part 2 |
| 94(1)   | **Recovery, management, control and disposal of orphan sources**  
1. Member States shall ensure that the competent authority is prepared, or has made provision, including assignment of responsibilities, to control and recover orphan sources and to deal with emergencies due to orphan sources and have drawn up appropriate response plans and measures. | EA(S)R Schedule 8 paragraph 35 |
<p>| 94(2)   | 2. Member States shall ensure that campaigns are organised, as appropriate, to recover orphan sources left behind from past practices. | Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018 |</p>
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<td>The campaigns may include the financial participation of Member States in the costs of recovering, managing, controlling and disposing of the sources and may also include surveys of historical records of authorities and of undertakings, such as research institutes, material testing institutes or hospitals.</td>
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| 95      | **Financial security for orphan sources**  
Member States shall ensure that a financial security system or other equivalent means is established to cover intervention costs relating to the recovery of orphan sources and which may result from implementation of Article 94. | EA(S)R Schedule 8 paragraph 36                                               |
| 96      | **Notification and recording of significant events**  
Member States shall require the undertaking to:  
(a) implement, as appropriate, a recording and analysis system of significant events involving or potentially involving accidental or unintended exposures;  
(b) promptly notify the competent authority of the occurrence of any significant event resulting or liable to result in the exposure of an individual beyond the operational limits or conditions of operation specified in authorising requirements with regard to occupational or public exposure or as defined by the competent authority for medical exposure, including the results of the investigation and the corrective measures to avoid such events. | EA(S)R Schedule 8 paragraph 20(k)                                             |
<p>| 97      | <strong>Emergency management system</strong>                                                                                                                                                                     | Emergency exposure situations, not regulated by SEPA                         |
| 98      | <strong>Emergency preparedness</strong>                                                                                                                                                                         |                                                                               |
| 99      | <strong>International cooperation</strong>                                                                                                                                                                       |                                                                               |
| 100(1)  | <strong>Programmes on existing exposure situations</strong>                                                                                                                                                      | Implemented through radioactive contaminated land                            |</p>
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<td>100(2)</td>
<td>2. Member States may decide, having regard to the general principle of justification, that an existing exposure situation warrants no consideration of protective or remedial measures.</td>
<td>Radioactive contaminated land legislation</td>
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<td>100(3)</td>
<td>3. Existing exposure situations which are of concern from a radiation protection point of view and for which legal responsibility can be assigned shall be subject to the relevant requirements for planned exposure situations and accordingly such exposure situations shall be required to be notified as specified in Article 25(2).</td>
<td>Radioactive contaminated land legislation</td>
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<td>101(1)</td>
<td><strong>Establishment of strategies</strong>&lt;br&gt;1. Member States shall arrange for the establishment of strategies to ensure the appropriate management of existing exposure situations commensurate with the risks and with the effectiveness of protective measures.</td>
<td>Radioactive contaminated land legislation</td>
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<tr>
<td>101(2)</td>
<td>2. Each strategy shall contain (a) the objectives pursued; (b) appropriate reference levels, taking into account the reference levels laid down in Annex I.</td>
<td>Radioactive contaminated land legislation</td>
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<td>102(1)</td>
<td><strong>Implementation of strategies</strong>&lt;br&gt;1. Member States shall assign responsibilities for the implementation of strategies for the management of existing exposure situations, and ensure appropriate coordination between relevant parties involved in the</td>
<td>Radioactive contaminated land legislation</td>
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<tr>
<td>102(2)</td>
<td>2. The form, scale and duration of all protective measures considered for implementation of a strategy shall be optimised.</td>
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<tr>
<td>102(3)</td>
<td>3. The distribution of doses that has resulted from the implementation of a strategy shall be assessed. Further efforts shall be considered with the aim of optimising protection and reducing any exposures that are still above the reference level.</td>
<td>Radioactive contaminated land legislation</td>
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<tr>
<td>102(4)</td>
<td>4. Member States shall ensure that those responsible for the implementation of a strategy shall regularly: (a) evaluate the available remedial and protective measures for achieving the objectives and the efficiency of planned and implemented measures; (b) provide information to exposed populations on the potential health risks and on the available means for reducing their exposure; (c) provide guidance for the management of exposures at individual or local level; (d) with regard to activities that involve naturally occurring radioactive material and are not managed as planned exposure situations, provide information on appropriate means for monitoring concentrations and exposures and for taking protective measures.</td>
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<td>103</td>
<td>Radon action plan</td>
<td>Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018</td>
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<td>104(1)</td>
<td><strong>Inspections</strong></td>
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<tr>
<td>1.</td>
<td>Member States shall establish a system or systems of inspection to enforce the provisions adopted pursuant to this Directive and to initiate surveillance and corrective action where necessary.</td>
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<tr>
<td>104(2)</td>
<td>2. Member States shall ensure that the competent authority establishes an inspection programme taking into account the potential magnitude and nature of the hazard associated with practices, a general assessment of radiation protection issues in the practices, and the state of compliance with the provisions adopted pursuant to this Directive.</td>
<td>EA(S)R Schedule 8 paragraph 31 (1) and (2)</td>
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<td>104(3)</td>
<td>3. Member States shall ensure that the findings from each inspection are recorded and communicated to the undertaking concerned. If the findings are related to an outside worker or workers, where appropriate, the findings shall also be communicated to the employer.</td>
<td>EA(S)R Schedule 8 paragraphs 31(3) and (4)</td>
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<tr>
<td>104(4)</td>
<td>4. Member States shall ensure that outlines of the inspection programmes and the main findings from their implementation are available to the public.</td>
<td>EA(S)R Schedule 8 paragraph 31(5) and Schedule 3, entries 38 and 39.</td>
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<tr>
<td>104(5)</td>
<td>5. Member States shall ensure that mechanisms are in place for the timely dissemination to relevant parties, including manufacturers and suppliers of radiation sources and, where appropriate, international organisations, of protection and safety information concerning significant lessons learned from inspections and from reported incidents and accidents and related findings.</td>
<td>HSE under IRR17</td>
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| 105     | **Enforcement**  
Member States shall ensure that the competent authority has the power to require any individual or legal person to take action to remedy deficiencies and prevent their | EA(S)R regulation 46 – 50 inclusive |
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<td>Reference levels for public exposure as referred to in Articles 7 and 101</td>
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<td>Activity values defining high-activity sealed sources as referred to in point (43) of Article 4</td>
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<td>Indicative list of practices involving non-medical imaging exposure as referred to in Article 22</td>
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<td>List of industrial sectors involving naturally-occurring radioactive material as referred to in Article 23</td>
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<td>Definition and use of the activity concentration index for the gamma radiation emitted by building materials as referred to in Article 75</td>
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<td>Annex IX</td>
<td>Indicative list of information for licence applications as referred to in Article 29 (a) Responsibilities and organisational arrangements for protection and safety. (b) Staff competences, including information and training.</td>
<td>EA(S)R Schedule 8 paragraph 15(2)</td>
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<td>(c) Design features of the facility and of radiation sources. (d) Anticipated occupational and public exposures in normal operation. (e) Safety assessment of the activities and the facility in order to: (i) identify ways in which potential exposures or accidental and unintended medical exposures could occur; (ii) estimate, to the extent practicable, the probabilities and magnitude of potential exposures; (iii) assess the quality and extent of protection and safety provisions, including engineering features, as well as administrative procedures; (iv) define the operational limits and conditions of operation. (f) Emergency procedures. (g) Maintenance, testing, inspection and servicing so as to ensure that the radiation source and the facility continue to meet the design requirements, operational limits and conditions of operation throughout their lifetime. (h) Management of radioactive waste and arrangements for the disposal of such waste, in accordance with applicable regulatory requirements. (i) Management of disused sources. (j) Quality assurance.</td>
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<td>Annex X</td>
<td>Data system for individual radiological monitoring as referred to in Articles 43, 44 and 51</td>
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<td>Annex XII</td>
<td>Information to members of the public about health protection measures to be applied and steps to be taken</td>
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<td>in the event of an emergency as referred to in Articles 70 and 71</td>
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<td>Annex XIII</td>
<td>Indicative list of types of building materials considered with regard to their emitted gamma radiation as referred to in Article 75</td>
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<td>Information to be provided in the records for high-activity sealed sources (HASS) as referred to in Article 89</td>
<td>EA(S)R Schedule 8 Table 5</td>
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| Annex XV | **Requirements for undertakings responsible for a high-activity sealed source as referred to in Article 91**

Each undertaking responsible for a high-activity sealed source shall:
(a) ensure that suitable tests, such as leak tests based on international standards, are undertaken regularly in order to check and maintain the integrity of each source;
(b) regularly verify at specific intervals, which may be determined by Member States, that each source and, where relevant, the equipment containing the source are still present and in apparently good condition at their place of use or storage;
(c) ensure that each fixed and mobile source is subject to adequate documented measures, such as written protocols and procedures, aimed at preventing unauthorised access to or loss or theft of the source or its damage by fire;
(d) promptly notify the competent authority of any loss, theft, leakage or unauthorised use of a source, arrange for a check on the integrity of each source after any event, including fire, that may have damaged the source, and, if appropriate, inform the competent authority thereof and of the measures taken;
(e) return each disused source to the supplier or place it | EA(S)R Schedule 8 paragraph 23(d) |
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<td>in a facility for long term storage or disposal or transfer it to another authorised undertaking unless otherwise agreed by the competent authority, without undue delay after termination of the use; (f) ascertain that, before a transfer is made, the recipient has appropriate licence. (g) promptly notify the competent authority of any accident or incident resulting in unintentional exposure of a worker or a member of the public.</td>
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| Annex XVI | **Identification and marking of high-activity sealed sources as referred to in Article 91**  
1. The manufacturer or supplier ensures that: (a) Each high-activity sealed source is identified by a unique number. This number shall be engraved or stamped on the source, where practicable. The number shall also be engraved or stamped on the source container. If this is not feasible, or in the case of reusable transport containers, the source container shall, at least, bear information on the nature of the source. (b) The source container and, where practicable, the source are marked and labelled with an appropriate sign to warn people of the radiation hazard.  
2. The manufacturer provides a photograph of each manufactured source design type and a photograph of the typical source container.  
3. The undertaking ensures that each high-activity sealed source is accompanied by written information indicating that the source is identified and marked in compliance with point 1 and that the markings and labels referred to in point 1 remain legible. The information shall include photographs of the source, source container, transport | EA(S)R Schedule 8 Paragraph 24 |
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<td>packaging, device and equipment as appropriate.</td>
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| Annex XVII | **Indicative list of types of existing exposure situations as referred to in Article 100**  
(a) Exposure due to contamination of areas by residual radioactive material from:  
(i) past activities that were never subject to regulatory control or were not regulated in accordance with the requirements laid down by this Directive;  
(ii) an emergency, after the emergency exposure situation has been declared ended, as provided for in the emergency management system;  
(iii) residues from past activities for which the undertaking is no longer legally accountable;  
(b) Exposure to natural radiation sources, including:  
(i) indoor exposure to radon and thoron, in workplaces, dwellings and other buildings;  
(ii) indoor external exposure from building materials;  
(c) Exposure to commodities excluding food, animal feeding stuffs and drinking water incorporating  
(i) radionuclides from contaminated areas specified in point (a), or  
(ii) naturally-occurring radionuclides. |                                                                                                           |
| Annex XVIII | List of items to be considered in preparing the national action plan to address long-term risks from radon exposures as referred to in Articles 54, 74 and 103                                                                 | Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions Regulations 2018) |
| Annex XIX | Correlation table referred to in Article 107                                                                                                                                                             | No need for transposition                               |
Introduction

1. The Scottish Government laid five regulations on 2 May 2018, emanating from the Community Empowerment (Scotland) Act 2015, relating to the community right to buy land. They are as follows:

Affirmative instrument

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

Negative instruments

- Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018 (SSI 2018/137)
- Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 (SSI 2018/140)

No Procedure instruments

- Land Reform (Scotland) Act 2016 (Commencement No. 8 and Saving Provision) Regulations 2018 (SSI 2018/138 (C.11))
- Community Empowerment (Scotland) Act 2015 (Commencement No. 11) Order 2018 (SSI 2018/139 (C.12))

Instruments for consideration

2. The Committee will consider the:

Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Eligible Land, Regulators and Restrictions on Transfers and Dealing) (Scotland) Regulations 2018 [draft].......................................................................................................................................................................2
Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018 (SSI 2018/137) .........................................................17
Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 (SSI 2018/140) ...........................................................................................................................................................................20

3. The Committee has also received three submissions on the instruments.
Delegated Powers and Law Reform Committee

4. At its meeting on 8 May, the Committee considered the following instruments and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit.

Procedure for Affirmative instruments

5. The draft regulations were laid on 2 May 2018 and referred to the Environment, Climate Change and Land Reform Committee. The regulations are subject to affirmative procedure (Rule 10.6). It is for the Environment, Climate Change and Land Reform Committee to recommend to the Parliament whether the Order should be approved. The Cabinet Secretary for Environment, Climate Change and Land Reform has, by motion S5M-12209 (set out in the agenda), proposed that the Committee recommends the approval of the regulations.

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

Type of Instrument: Affirmative
Laid Date: 2 May 2018
Circulated to Members: 4 May 2018
Meeting Date: 29 May 2018
Minister to attend meeting: Yes

Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee? No
Reporting deadline: 10 June 2018

Purpose

6. These Regulations make provision in connection with the right to buy abandoned, neglected or detrimental land under Part 3A of the Land Reform (Scotland) Act 2003 as inserted by section 74 of the Community Empowerment (Scotland) Act 2015.

Recommendation

7. The Committee must decide whether or not to agree to the motion, and then
Scottish Government Explanatory Note

As per purpose above and including:

Regulation 2 sets out the matters that Ministers must have regard to when establishing whether land is eligible by reason of being abandoned, neglected or detrimental under Part 3A of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) as amended by the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”).

Those matters fall within four broad categories: the physical condition of the land; the designation or classification of the land; the use or management of the land and whether the condition of the land is such that it is causing harm to the environmental wellbeing of the relevant community.

Regulation 3 sets out in detail what matters Ministers must have regard to when assessing the physical condition of the land in relation to whether the land is abandoned or neglected. The matters include the physical condition of the land, the length of time that it has been in that condition, the extent to which the condition affects public safety or adjacent land and whether the condition is causing environmental harm.

Regulation 4 sets out in detail what matters Ministers must have regard to when assessing the designation or classification of the land in relation to whether the land is abandoned or neglected. The matters include whether the land is part of a nature reserve, a conservation area, includes a listed building or a special monument, is a designated special site or is subject to any policies or proposals contained in a local development plan or guidance, strategic plan or guidance or the National Planning Framework 3.

Regulation 5 sets out in detail what matters Ministers must have regard to when assessing the use or management of the land in relation to whether the land is abandoned, neglected or detrimental. The matters include whether the current use or management is for lawful purposes, whether the land is being held to preserve the natural, historic or built environment, and whether it is being held for the purposes of an activity that requires a licence.

Regulation 6 sets out in detail what matters Ministers must have regard to when assessing whether there is harm to the environmental wellbeing of the community. The matters are whether the use or management of the land is causing a statutory nuisance or is subject to a closure order or warning notice.

Under section 97C(5)(a) of the 2003 Act, land on which there is a building or structure which is an individual’s home is ineligible unless it is occupied by an individual under a tenancy. Regulation 7 sets out types of occupation or possession that are, or are to be treated as a tenancy for the purposes of section 97C(5)(a) of the 2003 Act. These are tied accommodation, occupation under a licence agreement that is in the nature of a tenancy, residential accommodation relating to employment
or education, temporary accommodation provided to homeless persons or occupation or possession under a liferent.

Regulation 8 sets out land that pertains to an individual’s home which is ineligible under the right to buy abandoned, neglected or detrimental land. This includes land that forms the curtilage of the home and land used for the following purposes:- storage of possessions owned by the occupants of the home and that are used for the maintenance, upkeep or subsistence of the home or its occupants; storage of vehicles used by the occupants of the home; drainage, water supply or provision of services such as media or electricity for the home; to grow food which is principally for the subsistence of the occupants of the home; for activities including recreation and leisure activities which are incidental to the use of the home; to keep pets belonging to the occupants of the home; for businesses run by occupants of the home; and for access to the home, if the land is owned by the same person that owns the home.

Regulation 9 sets out other ineligible land being land which is held or used by a Minister of the Crown or government department and land consisting of rights in relation to petroleum, coal, gold or silver.

Under section 97H(5)(b) of the 2003 Act, before an application is submitted under section 97C(2)(b) of the Act, a Part 3A community body must have made a request to any relevant regulator(s) to take action in relation to the land in exercise of its (or their) relevant regulatory functions if that action could, or might reasonably, be expected to remedy or mitigate the harm being caused by the detrimental land. Regulation 10 defines a “relevant regulator” as being a person, body or office holder who has a regulatory function which could address the harm (or the action which is causing the harm).

Regulation 11 sets out the period of time during which a landowner is prohibited from transferring or taking action with a view to transferring their land (“the restriction period”). The restriction period begins on the date on which a pending application made under section 97G appears on the Register of Applications by Community Bodies to Buy Land and ends on the earliest of the following:—

- on the day after the expiry of the time in which an appeal can be lodged under section 97V(6) of the 2003 Act but only where there is no appeal against a Ministerial decision to allow the application;
- where there is an appeal, the day on which the sheriff issues a decision but only if the decision is in favour of an appeal against a Ministerial decision to allow the application;
- the expiry of the period provided under section 97P(1) of the 2003 Act allowed for the Part 3A community body to inform Ministers that they wish to proceed with the purchase after being given consent to do so but only if the Part 3A community body did not notify Ministers and the owner of the land of its intention to proceed to buy the land;
- the day on which the owner of the land receives a copy of the Ministers’ acknowledgement under section 97P(3) of the Act that the Part 3A community body has withdrawn their application or confirmed to Ministers that they do not wish to proceed;
• the day on which the Part 3A community body’s application is treated as withdrawn under section 97R(5) of the Act;
• the day on which the consideration is paid by the Part 3A community body 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
• the day on which, following the consignment of the consideration or estimate of what the consideration might be to 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.

Regulation 12 sets out what is prohibited during the restriction period set out under regulation 11. The prohibition applies to any transfer of land that forms the subject of an application under section 97G of the 2003 Act or any action taken with a view to transfer such land. Action is taken with a view to transfer land when it is advertised or otherwise exposed for sale, the owner or such a creditor or person acting on behalf the owner enters into negotiations with a view to transfer the land or such person proceeds further with a proposed transfer which was initiated prior to the date on which the interest in the land was registered.

Regulation 13 sets out exceptions to the actions prohibited under regulation 12.

These include the following transfers, a transfer:—
• other than for value (e.g. a gift);
• implementing a court order;
• between spouses or civil partners after they have ceased living together (as long as the arrangement was agreed before the application was received);
• between companies in the same group;
• to a statutory undertaker for the purposes of carrying out that undertaking;
• as part of a compulsory purchase;
• as a result of a Part 2, 3 or 3A of this Act;
• implementing missives (only if the missives were signed prior to the application being made);
• implementing an option agreement (only if that agreement was created prior to the application being received);
• as part of a sequestration or bankruptcy; and
• as the result of the death of either a partner of a firm or the trustee of a trust.

Where a transfer that is otherwise than for value, between companies or on the assumption or resignation or death of one or more partners in a firm or of the trustees in a trust is part of a scheme of transfer or is one of a series of transactions, the main purpose or effect of which is to avoid regulation 12, it is not excluded under regulation 13 and therefore remains prohibited.
Regulation 14 requires that where an owner is transferring their land during the prohibition period they must include in the deed giving effect to the transfer a declaration stating which exception set out in regulation 13 they are relying on and, where a transfer that is otherwise than for value, between companies or on the assumption or resignation or death of one or more partners in a firm or of the trustees in a trust that the transfer does not form part of a scheme of transfer or a series of transactions such that it remains prohibited.

Regulation 15 provides that any right of pre-emption, redemption or reversion and any rights or interest in land conferred under Part 2 of the 2003 Act are suspended from the date on which a pending application made under section 97G of the 2003 Act appears in the Register of Applications by Community Bodies to Buy Land and ends on the earliest of the dates specified in regulation 11 (the restriction period).

**Scottish Government Policy Note**

The above instrument was made in exercise of the powers conferred by sections 97C(4), (5)(b) and (f), (6)(b), 97H(6), 97N(1) and (3) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) and all other powers enabling Ministers to do so. The instrument is subject to the affirmative procedure.

**Policy Objectives**


The purpose of the instrument is to implement the new right to buy. The instrument is one of seven instruments implementing Part 3A.

Regulation 1 specifies that the instrument comes into force on 27 June 2018 and defines the meaning of certain terms used within the regulations to ensure clarity when in operation.

Regulation 2 specifies broad matters that Ministers must have regard to when determining whether land is eligible for the purposes of Part 3A of the 2003 Act. The matters are detailed in regulations 3 to 6 of this instrument. Regulation 2 specifies which of regulations 3 to 6 are relevant to applications for land that a community body asserts is abandoned or neglected and which are relevant to applications for land that a community body asserts is causing harm to the environmental wellbeing of the community.

Regulation 3 specifies matters relating to the physical condition of the land which are relevant to applications where the community body assert that the land is abandoned or neglected. These matters are the physical condition of the land and any buildings or structures on the land, how long the land or any buildings or other structures on the land have been in that condition, and what affect that condition is having on adjacent land, the environment or public safety.
Regulation 4 specifies matters relating to designations or classifications of land. This includes whether the land is or forms part of a nature reserve, conservation area or special site, whether any building or structure on the land is a listed building or scheduled monument and whether the site is part of a local or strategic development plan or whether any policies or proposals in the National Planning Framework 3 are relevant to the land or any part of it. These classifications or designations could restrict what can be done with the land, which may have an effect on its condition.

Regulation 5 specifies matters relating to the use or management of the land. These matters may have an effect on the condition of the land. The matters are the extent to which the land, buildings or other structures on the land are used or managed for lawful public recreation or leisure activities, the extent to which the land is being held for the purpose of preserving or conserving the natural, historic or built environment and whether the land or any building or other structure on the land is being used or managed for the purpose of an activity that requires a permit or a license. It refers to the length of time that the land has been used in such a way or, as the case may be, not used for any discernible purpose.

Regulation 6 specifies matters relating to harm to the environmental wellbeing of the community. The matters are whether the use or management of the land or any building or structure on the land has resulted in or caused, directly or indirectly, a statutory nuisance (section 79(1) of the Environmental Protection Act 1990), is subject to a current closure notice, a current closure order (sections 26 and 29 of the Antisocial Behaviour etc. (Scotland) Act 2004) or has resulted in a warning notice (section 44 of the 2004 Act). These all indicate that there is some sort of harm that has been identified through another mechanism.

Regulation 7 specifies types of occupancy or possession that are, or are to be treated as, a tenancy for the purposes of section 97C(5) of the Act. Section 97C of the 2003 Act excludes from Part 3A any land on which there is a building that is an individual’s home, other than those occupied by a tenancy. The land to which such occupancy or possession relates is therefore eligible for the purposes of Part 3A.

The reason for this is that tenant’s rights are protected through other means, depending on the type of tenancy, and that a change of owner would not change those rights. In addition, as part of the process the tenant is actively given the opportunity to submit their views on the application to Scottish Ministers.

Regulation 8 specifies types of land that pertain to land occupied by an individual’s home and which are therefore ineligible. The types of land are land which is connected with the occupation and use of the home, but not necessarily physically connected. This might include, for example, a separate storage building, a home office, or kennels.

Regulation 9 specifies other land which is ineligible under Part 3A which is land that is held or used by a Minister of the Crown or Government department which is in keeping with Part 2 of the 2003 Act and land consisting of a right to petroleum, coal, gold or silver.
Regulations 10 defines what Ministers mean by the term “regulator” for the purposes of Section 97H(5) of the 2003 Act. If a community group’s application is based on harm being committed, the group must have tried to have that harm addressed by someone who has a regulatory function to deal with that harm. This, and other requirements in relation to having already tried and failed to purchase the land mean that a compulsory purchase through Part 3A cannot be a community’s first step in trying to deal with the harm asserted in their application.

Regulations 11 to 14 define restriction periods in relation to land under Section 97G of the 2003 Act while the application is pending, as well as what actions are restricted during that period. These regulations also set out exceptions to the restriction.

Regulation 11 details the restriction period itself. Once an application shows as pending on the Register of Applications by Community Bodies to Buy Land, a prohibition is placed on transferring the land, this includes any action taken with a view to transfer the land. We would expect that any party interested in buying land which is subject to a prohibition will become aware of the prohibition once it has been registered.

If the application is rejected, the prohibition period ends when the period for any right of appeal on that decision has also expired, or, in the case where an appeal has been lodged, the sheriff upholds the original decision to reject.

If the application is approved, it will end on the earliest of the following dates:

- When the community body withdraw their application, or at the end of the period allowed for a community body to inform Ministers of their intention to proceed, do not do so.
- If the community body fails to conclude the purchase within the relevant timetable, or fail to make full payment by the end of that timescale. It will end on the day on which the application is to be treated as withdrawn under those circumstances.
- When the transfer of the land is completed.

Regulation 12 details the types of dealings that are restricted during this period. The prohibition applies to any transfer of the land which forms the subject of the application and any action taken with a view to transfer that land. The prohibition applies to the owner, any creditor or any third party who would be authorised to transfer the land on behalf of an owner or creditor.

Regulation 13 details the exemptions to regulation 12. These are any transfers otherwise than for value, legal obligations to transfer (for example, as part of a separation agreement or as a result of another legal process such as bankruptcy).

Regulation 14 requires that a transferor must include a declaration stating which exemption has been applied in any deed giving effect to an exempt transfer.
Regulation 15 states that other rights of pre-emption, reversion and redemption and any right or interest conferred under Part 2 of the 2003 Act is suspended for the same period as the prohibition on transfers.

Consultation

A public consultation took place between 21 March 2016 and 20 June 2016, seeking views on the secondary legislation relating to the Community Right to Buy Abandoned, Neglected or Detrimental Land.

A total of 51 responses were received and an analysis of the consultation responses was published in September 2016.

The majority of responses were in support of the legislation, with any concerns being with the practical implementation and use of the right to buy.

In addition, during January 2018, a series of face to face meetings with key stakeholders were held, to discuss the draft regulations and take comments that could be incorporated into the final draft. Stakeholders included Scottish Land & Estates, Community Land Scotland, Community Ownership Support Services, NFUS, Cairngorms National Park, and Housing Groups.

Impact Assessments

An equality impact assessment was completed on the instrument in November 2017.

A Privacy Impact Assessment was not required for introduction of the Community Empowerment (Scotland) Bill, and there are no matters arising within this instrument which would require a privacy impact assessment to be carried out.

A pre-screening Strategic Environmental Assessment (SEA) was carried out 20 December 2017 and no concerns were raised.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed on the policy in June 2014. The financial impacts of the regulations contained within this instrument have been considered in relation to the BRIA at the time it was drafted, and there are no further financial impacts identified in this instrument which were not contained within the BRIA.

Directorate for Environment and Forestry
May 2018
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 – 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

<table>
<thead>
<tr>
<th>Option</th>
<th>Total benefit per annum:</th>
<th>Total cost per annum:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- economic, environmental, social</td>
<td>- economic, environmental, social - policy and administrative</td>
</tr>
<tr>
<td>1</td>
<td>The proposals will increase the uptake of the 2003 Act, through use of the Part 3A provisions. Will help communities throughout 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. The proposals will, through the administrative process empower communities across the whole of Scotland.</td>
<td>£142,000 administrative costs to Ministers.</td>
</tr>
<tr>
<td>2</td>
<td>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.</td>
<td>Will mean that there are not full administrative provisions for Part 3A of the 2003 Act and the provisions cannot be used. 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</td>
</tr>
</tbody>
</table>
Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018 (SSI 2018/137)

Title of Instrument: Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Compensation) (Scotland) Order 2018 (SSI 2018/137)

Type of Instrument: Negative

Laid Date: 2 May 2018

Circulated to Members: 4 May 2018

Meeting Date: 29 May 2018

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee?: No

Reporting deadline: 4 June 2018

Purpose

8. This Order provides the procedure under which claims for compensation under Part 3A of the Land Reform (Scotland) Act 2003 may be made.

Scottish Government Explanatory Note

As per purpose above and including:

Article 2(1) provides that a claim for compensation under section 97T(1)(a), (b) or (c) of the Act must be submitted at the registered office of the community body, where the community body is liable to pay any compensation due under the Act.

Article 2(2) provides that a claim for compensation under section 97T(3) of the Act must be submitted to Scottish Ministers where they are liable to pay any compensation under the Act.
Article 2(3) provides the timescales within which a claim for compensation must be submitted to a community body.

Article 2(4) provides the timescale within which a claim for compensation must be submitted to Scottish Ministers.

Article 2(5) provides that a claim for compensation as mentioned in article 2(1) or (2) must specify which paragraph of section 97T(1) of the Act the loss or expense falls and that a claim must be fully vouched.

Article 2(6) provides that the period of time after which any question as to whether any compensation is payable or as to the amount of any compensation may be referred to the Lands Tribunal under section 97T(5) of the Act is 60 days beginning with the date of submission of the claim for compensation.

Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by section 97T(4) of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) and all other powers enabling Ministers to do so. The instrument is subject to the negative procedure.

Policy Objectives


The purpose of the instrument is to implement the community right to buy abandoned, neglected or detrimental land by providing the procedure under which claims for compensation under section 97T of the 2003 Act can be made. The instrument is one of seven instruments implementing the new right to buy.

Regulation 1 states that the instrument will come into force on 27 June 2018 and defines the meaning of certain phrases within the instrument.

Under section 97T(1) of the 2003 Act, any person, including an owner or former owner of land, who has incurred loss or expense in complying with the requirements of Part 3A following the making of an application by a community body; as a result of the withdrawal of a community body’s confirmation under section 97P of the 2003 Act or its failure otherwise to complete the purchase having previously confirmed its intention to do so or; as a result of the failure of the community body to complete the purchase is entitled to claim for compensation.

Regulation 2(1) specifies that a claim for compensation should be submitted to the community body which is liable to pay the compensation at the registered office of that body.

Regulation 2(2) specifies that a claim should be submitted to Ministers if the claim is for compensation under section 97T(3) of the 2003 Act. Section 97T(3) specifies that
if expenses have been incurred as a result of complying with the requirements of Part 3A of the 2003 Act (section 97T(1)(a) of the 2003 Act), and the application has been refused, the owner of the land is entitled to compensation from Ministers.

Regulation 2(3) specifies that a claim for compensation is made under section 97T(1)(a), (b) or (c) of the Act must be made within the period of 90 days beginning:

- on the final settlement date (where the application was successful and the purchase concluded);
- on the date of withdrawal of the application by the community body (where the community group withdraws its application); or
- on the date on which the payment was due to be made (where the community group fail to complete the purchase).

Regulation 2(4) specifies that a claim under section 97T(3) of the 2003 Act must be made within 90 days beginning with the date of notification under section 97M(1)(b) or (c) of the 2003 Act of the refusal by Ministers to grant the community body’s application.

In all cases, regulation 2(5) requires that any claim for compensation must be fully vouched (substantiated and evidenced) and specify under which section of the 2003 Act the claim is to be made.

Section 97T(5) of the 2003 Act provides that where at the expiry of such time period as may be fixed the question as to whether compensation is payable or the amount of compensation payable has not been settled between the parties, either party may refer the question to the Lands Tribunal. Regulation 2(6) provides that the period of time referred to in section 97T(5) of the 2003 Act is 60 days.

Consultation

A public consultation took place between 21 March 2016 and 20 June 2016, seeking views on the secondary legislation relating to the Community Right to Buy Abandoned, Neglected or Detrimental Land.

A total of 51 responses were received and an analysis of the consultation responses was published in September 2016.

The majority of responses were in support of the legislation, with any concerns being with the practical implementation and use of the right to buy.

In addition, during January 2018, a series of face to face meetings with key stakeholders were held, to discuss the draft regulations and take comments that could be incorporated into the final draft. Stakeholders included Scottish Land & Estates, Community Land Scotland, Community Ownership Support Services, NFUS, Cairngorms National Park, and Housing Groups.
Impact Assessments

An equality impact assessment was completed on the instrument in November 2017. The equality impact assessment will be available on the Scottish Government website.

A Privacy Impact Assessment was not required for introduction of the Community Empowerment (Scotland) Bill, and there are no matters arising within this instrument which would require a privacy impact assessment to be carried out.

A pre-screening Strategic Environmental Assessment (SEA) was carried out 20 December 2017 and no concerns were raised.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) was completed on the policy in June 2014. The financial impacts of the regulations contained within this instrument have been considered in relation to the BRIA at the time it was drafted, and there are no further financial impacts identified in this instrument which were not contained within the BRIA.

Directorate for Environment and Forestry
May 2018

Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 (SSI 2018/140)

Title of Instrument: Community Right to Buy (Abandoned, Neglected or Detrimental Land) (Applications, Ballots and Miscellaneous Provisions) (Scotland) Regulations 2018 (SSI 2018/140)

Type of Instrument: Negative

Laid Date: 2 May 2018

Circulated to Members: 4 May 2018

Meeting Date: 29 May 2018

Minister to attend meeting: Yes

Motion for annulment lodged: No

Drawn to the Parliament’s attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 4 June 2018
Purpose

9. These Regulations make provision in connection with the right to buy abandoned, neglected or detrimental land under Part 3A of the Land Reform (Scotland) Act 2003 as inserted by section 74 of the Community Empowerment (Scotland) Act 2015.

Scottish Government Explanatory Note

As per purpose above and including:

These Regulations make provision in connection with the right to buy abandoned, neglected or detrimental land under Part 3A of the Land Reform (Scotland) Act 2003 (“the 2003 Act”) as inserted by section 74 of the Community Empowerment (Scotland) Act 2015.

Part 2 concerns the application required to be submitted by a Part 3A community body that wishes to apply to Ministers for consent to exercise a right to buy under section 97G of the 2003 Act.

Regulation 2 provides that the application must be in the form specified in schedule 1 and include or be accompanied by information of the kind specified in that schedule.

Regulation 3 provides specifications for maps, plans or other drawings submitted with the application specified in schedule 1.

Regulation 4 sets out the manner in which an application for a right to buy under Part 3A must be publicly notified by Ministers as required by section 97G(11) of the 2003 Act. Notification must be by way of an advertisement in a digital or paper edition of a newspaper that circulates in the area where the community is located or by an advertisement on a publicly available webpage or website maintained by Ministers for purposes which include making any applications under Part 3A available for inspection by the public.

Regulation 5 specifies that a notice of Ministers’ decision on an application as required by section 97M(1) of the 2003 Act is to be in the form specified in schedule 2.

Part 3 concerns the ballot that must be held by the Part 3A community body in the six months preceding the submission of an application under Part 3A as required by section 97J(1) of the 2003 Act.

Regulation 6 provides that the ballot must be conducted in a fair and reasonable manner and as a secret postal ballot. It also requires the Part 3A community body to ascertain all eligible voters in the community and send to them a ballot paper containing the question on which the vote is to be taken, the ballot deadline, a stamped addressed envelope and additional information about the Part 3A community body and its proposal.
Regulation 7 specifies that a person eligible to vote in the ballot may request to be permitted a proxy vote and sets out the requirements for making such a request. The Part 3A community body must permit a proxy vote to a person who makes a valid request.

Regulation 8 requires the Part 3A community body to appoint an observer to oversee the counting of the completed ballot papers and the recording of the result. The observer must be an individual who is independent of the Part 3A community body and must sign a declaration that the person observed the counting and recording of the votes. The declaration is contained in schedule 4.

Regulation 9 specifies that the ballot result must be published not later than 14 days after the ballot deadline (as defined by regulation 6(3)(b)). The result must be provided in the form specified in schedule 3 and include information of the kind specified in that schedule. The result must be published in a digital or paper edition of a newspaper circulating in the area where the community is located and on a publicly accessible webpage or website that is operated by or on behalf of the Part 3A community body, if such a webpage or website exists.

Regulation 10 provides that Ministers must be notified of the ballot result as required by section 97J(4) of the 2003 Act in the form specified in schedule 4.

Regulation 11 requires the Part 3A community body to retain evidence:
- that, in the course of running the ballot, they complied with regulation 6;
- of all requests for a proxy vote and all proxy votes made under regulation 7; and
- all completed and returned ballot papers

for two years after the ballot deadline.

Regulation 12 provides that a Part 3A community body may apply for reimbursement of the expense of conducting a ballot. The application for reimbursement must be made on or after the date on which the application to buy land is made under section 97G of the 2003 Act and before the earliest of the following dates:
- on the day after the expiry of the time in which an appeal can be lodged under section 97V(6) of the 2003 Act but only where there is no appeal against a Ministerial decision to allow the application;
- where there is an appeal against a Ministerial decision to allow the application, the day on which the sheriff issues a decision but only if the decision is in favour of an appeal;
- the expiry of the period provided under section 97P(1) of the 2003 Act allowed for the Part 3A community body to inform Ministers that it intends to proceed with the purchase after being given consent to do so but only if the Part 3A community body did not notify Ministers and the owner of the land of its intention to proceed to buy the land;
- the date of notice of withdrawal of the application under section 97P(2)(a) of the Act;
- the date of notice of withdrawal of the confirmation of intention to proceed under section 97P(2)(b) of the Act;
the day on which the Part 3A community body’s application is treated as withdrawn under section 97R(5) of the Act; or

the day on which the transfer to the Part 3A community body is completed.

Regulation 13 specifies the information that must be included in the Part 3A community body’s application for reimbursement of the expense of conducting the ballot.

Regulation 14 provides that Ministers may, no later than 30 days after an application under regulation 12 is received, request further information from the Part 3A community body. The Part 3A community body then has 7 days in which to respond with the information requested or with an explanation as to why the additional information cannot be provided.

Regulation 15 provides that no later than 60 days after the application under regulation 12 is received, Ministers must calculate the amount, if any, to be reimbursed to the Part 3A community body. Only expenses that were incurred in the conduct of the ballot which are directly attributable to the activities specified in regulation 6 are eligible for reimbursement and only provided that they were not incurred retrospectively.

Regulation 16 provides that a Part 3A community body has the right to appeal a decision of Ministers under regulation 15 to the Lands Tribunal. Any appeal under regulation 16 must be lodged within 28 days from the date that the Part 3A community body receives a decision from Ministers under regulation 15. The Lands Tribunal may make an order requiring Ministers to reimburse a specified amount to the Part 3A community body. There is no right of appeal of a decision under regulation 16.

Regulation 17 extends the types of area that can be used by a Part 3A community body when describing the area of the community to which it relates. Section 97D(9) of the 2003 Act provides that a community is defined by reference to a postcode unit or units or a prescribed type of area (or both such unit and type of area) and regulation 17 sets out that they can also refer to electoral wards, community council areas, postcode areas, postcode districts, postcode sectors, an island or a locality or settlement delineated on the maps included in the Population estimates for Settlements and Localities in Scotland – Mid-2016. There is a weblink for accessing this publication noted in the footnotes.

Regulation 18 provides that the charges for copies of entries from the Register of Applications by Community Bodies to Buy Land kept under section 52(1) of the Land Reform (Scotland) Act 2016 are £30 for an extract of registration or a colour plan and £16 for a plain copy of registration or a black and white plan. These amounts are subject to VAT.

Regulation 19 provides that where a Part 3A community body is liable to pay compensation under section 97T of the 2003 Act and are eligible for a grant towards their liability under section 97U of the 2003 Act that the application for that grant must be in the form specified in schedule 5. An application under this regulation must be submitted within 90 days of the date on which they Part 3A community body and
the claimant agreed the amount of compensation payable or the date on which the Lands Tribunal determined a question referred to it as to the amount, if any, of compensation due under section 97T(5) of the 2003 Act. Ministers must acknowledge receipt of an application for a grant made in accordance with regulation 19(1) within 7 days of receiving it and issue their decision within 28 days.

**Scottish Government Policy Note**

The above instrument was made in exercise of the powers conferred by sections 97D(9), 97G(5)(a) and (c) and (12), 97J(2), (3), (4), (7) and (8), 97M(1) and (2) and 97U(6) of the Land Reform (Scotland) Act 2003 ("the 2003 Act"), and section 52(10)b of the Land Reform (Scotland) Act 2016 ("the 2016 Act") and all other powers enabling Scottish Ministers to do so. The instrument is subject to the negative procedure.

**Policy Objectives**


The purpose of the instrument is to implement the community right to buy abandoned, neglected or detrimental land. The instrument is one in a suite of seven instruments implementing the new right to buy.

Regulation 1 states that the instrument will come into force on 27 June 2018 and defines the meaning of certain phrases within the instrument.

Regulation 2 specifies that any right to buy application under Part 3A must use the form in schedule 1 and include or be accompanied by the information requested in that form.

Regulation 3 specifies requirements for any maps or other drawings submitted as part of an application. This is to ensure that Scottish Ministers and Registers of Scotland are able to identify the land in the application as accurately as possible.

Regulation 4 specifies the manner in which Scottish Ministers must publish a public notice of any application that they receive. This can either be in a newspaper (digital or paper) circulating in the community area, or on a website maintained by Scottish Ministers for the purposes of making such public notices available for inspection or both.

The purpose of such a notice is to ensure that anyone with an interest in the application has the opportunity to submit their views on the application to Scottish Ministers.

Regulation 5 specifies that the form which the written notice that Scottish Ministers must give of their decision on an application must follow is specified in schedule 2.
Regulation 6 specifies that the ballot must be conducted in a fair and reasonable manner and conducted as a secret postal ballot. The community body must also identify who is eligible to vote in the ballot.

The community body must give each person eligible to vote a ballot paper along with the information specified in the regulation, which includes details as to how additional information on the community body’s proposals for the land can be obtained. Each person who is eligible to vote must also be given stamped addressed envelope to return the ballot paper.

Regulation 7 specifies the process for applying for a proxy vote. A proxy vote must be accepted if it is made in accordance with the regulation. This helps ensure that the ballot is fair and open.

Regulation 8 specifies that a community body must appoint an independent observer to oversee the ballot count and recording of the result. The ballot is conducted by the community body themselves, so it is important to ensure that there is independent oversight so that the count of the votes, and the declaration of the result, is above reproach. Under Part 2 of the 2003 Act, the ballot process is conducted by an independent contractor appointed by Scottish Ministers and, as such, there is no need for an observer to be appointed.

Regulation 9 specifies the form and manner in which the community body must publish the result of the ballot. This is in a standardised form contained in schedule 3 in order to ensure consistency. The form shows the name of the community body, a description of the land to which the application relates, when the ballot was concluded, the number of eligible voters, the number who actually voted, and the numbers for and against the proposal that the community body buy the land. This information must then be published in a newspaper (digital or paper) in the community area and on a webpage or website run by or on behalf of the community body (if one exists), to ensure that all members of that community have the opportunity to find out the result. The result must be published no later than 14 days beginning with the ballot deadline.

Regulation 10 specifies that the form that a community body must use in order to inform Scottish Ministers of the ballot result is in schedule 4.

Regulation 11 specifies the information relating to the ballot that must be retained by the community body for a period of 2 years after the ballot. This is consistent with Part 2 of the 2003 Act.

The 2003 Act allows Scottish Ministers to make provision in order to enable a community body to apply for the reimbursement of costs incurred in conducting the ballot. Regulation 12 allows a community body to apply to Scottish Ministers for reimbursement of the costs of conducting a ballot.

The ballot itself must be held during the six months immediately preceding the date on which an application is made to Scottish Ministers. Any claim for costs cannot be made before the application is received, and must be made by the earlier or earliest
of the dates specified in either regulation 12(3) or (4) depending on whether the application has been successful.

If the community body is refused consent to exercise the right to buy, then the claim must be received on the earlier of:

- the day after the expiry date for an appeal against the Minister’s decision (which is itself 28 days after that decision), or
- if an appeal is lodged, and the sheriff’s decision upholds the Ministerial decision to refuse consent, then the day of the sheriff’s decision.

If the community body is granted consent to exercise the right to buy, then the claim must be received on the earliest of:

- if the community body do not inform Scottish Ministers of their intention to proceed within the period allowed (21 days from the date that they receive the valuation), then by the end of period;
- by the date of the withdrawal notice from the community body (either before or after indicating their intention to proceed);
- the date on which the application is considered to be withdrawn as a result of failing to conclude the transfer or;
- the completion date of the transfer.

Regulation 13 specifies the information that must be included in any claim for reimbursement of ballot costs. This includes details of the community body, including contact details, the application date, ballot question and deadline and a statement of all costs incurred in conducting the ballot. Each cost claimed for must state:

- the date that the cost was incurred
- a description of the goods or services to which the cost relates
- evidence that the cost was incurred in conducting the ballot
- the date on which the goods or services were provided

Regulation 14 specifies that Scottish Ministers may request further information no later than 30 days beginning with the date on which Scottish Ministers receive an application for reimbursement and that a community body must respond to such a request no later than 7 days after the body has received the request.

Regulation 15 sets out how Scottish Ministers must calculate any reimbursement to be paid and provides further detail on the types of costs that are eligible.

The community body can also include any other information with their application that they think is relevant.

Regulation 15 details the timescale for Scottish Ministers’ decision on the application for ballot costs, and what they must take into account in making that decision. Scottish Ministers have 60 days beginning with the date on which they receive the claim for reimbursement of ballot costs to notify the community body of their decision and pay the relevant costs.
Relevant costs are those directly attributable to activities specified in regulation 6. Examples of such costs are the cost of posting, printing costs for ballot papers and stationery. Costs such as those associated with promoting the ballot are not directly attributable to the activities in regulation 6 and are therefore not eligible for a claim for reimbursement.

Costs incurred retrospectively are also not eligible for a claim for reimbursement. A cost is incurred retrospectively if the initial goods or services were provided at no cost.

Regulation 16 provides for a right of appeal against from a decision by Scottish Ministers’ on the reimbursement of ballot costs. An appeal must be lodged with the Lands Tribunal within 28 days beginning on the date on which the community body received Scottish Ministers’ decision. There is no right of appeal from a decision of the Tribunal, meaning that the outcome of any appeal is final.

Regulation 17 specifies the various types of area by which a community body can be defined. These are in line with those in Part 2 of the 2003 Act.

Regulation 18 details the charges for copies of the entries from the Register of Applications by Community Bodies to Buy Land, which will hold details of every application under Part 3A (and in future, Part 5 of the Land Reform (Scotland) Act 2016).

The charges are £30 for an extract of registration and colour plan and £16 for a plain copy of registration and black and white plan. The charges are subject to VAT.

It is worth noting that the register is free to view on the Registers of Scotland website, in the same way as the current Register of Community Interest in Land (which holds applications made under Part 2 of the 2003 Act). To date, no community body has requested a formal copy of any of the entries from that register.

Section 97T of the 2003 Act allows an owner, or former owner, of land who has incurred costs associated with complying with a Part 3A application the right to claim compensation. If the application is refused, that compensation claim is made to Scottish Ministers. In all other cases, it is made to the community body.

When such a claim is made to the community body, and the community body is unable to meet the claim after settlement of all liabilities in relation to the purchase, and after taking reasonable steps to obtain funds to meet the claim, the community body can apply to Scottish Ministers for a grant to meet the claim.

Regulation 19 specifies that the a claim for compensation under section 97U of the 2003 Act is to be made in the form in schedule 5 and that it should include the information of the kind specified in that schedule. A claim for compensation must be submitted to Scottish Ministers within 90 days beginning on the date on which a community body and the claimant agreed the amount payable or on the date on which the lands Tribunal determined a question referred to it under section 97T(5) of the 2003 Act as to the amount, if any, payable. The regulation also details the time
frame within which Scottish Ministers must both acknowledge and issue a decision on such a claim.

**Consultation**

A public consultation took place between 21 March 2016 and 20 June 2016, seeking views on the secondary legislation relating to the Community Right to Buy Abandoned, Neglected or Detrimental Land.

A total of 51 responses were received and an analysis of the consultation responses was published in September 2016.

The majority of responses supported the proposals. Concerns were generally in relation to the practical implementation and use of the right to buy.

In addition to the public consultation, a series of face-to-face meetings with key stakeholders were held in January 2018. These were used to discuss the draft regulations and views from those meetings have been incorporated into the final draft. Stakeholders included Scottish Land & Estates, Community Land Scotland, Community Ownership Support Services, NFUS, Cairngorms National Park, and Housing Groups.

**Impact Assessments**

An equality impact assessment was completed on the instrument in November 2017. The equality impact assessment will be available on the Scottish Government website.

A Privacy Impact Assessment was not required for introduction of the Community Empowerment (Scotland) Bill, and there are no matters arising within this instrument which would require a privacy impact assessment to be carried out.

A pre-screening Strategic Environmental Assessment (SEA) was carried out 20 December 2017 and no concerns were raised.

**Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) was completed on the policy in June 2014. The financial impacts of the regulations contained within this instrument have been considered in relation to the BRIA at the time it was drafted, and there are no further financial impacts identified in this instrument which were not contained within the BRIA.

Directorate for Environment and Forestry
May 2018
Written Submission from Community Land Scotland

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;
(iv) the realisation of the human rights of the members 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—
the amenity and prospects of the relevant community;
the preservation of the relevant community or its development;
the social development of the relevant community;
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.]
Written Submission from Scottish Land and Estates

Dear Committee Members,

Abandoned, Neglected or Detrimental Land – Secondary Legislation

Scottish Land & Estates is pleased to have been engaged with Scottish Government prior to and during the passage of the Community Empowerment (Scotland) Bill. Since the Act was passed and provisions incorporated in the Land Reform (Scotland) Act 2003, we have been in further dialogue regarding the secondary legislation, including in relation to the regulations on abandoned and neglected land, which are of interest to our members across rural Scotland.

This new form of right to buy whereby a landowner may be compelled to sell his property if it is deemed to be wholly abandoned or neglected, or if the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of the community is clearly a substantive power and we recognise the importance of getting the regulations properly drafted for both landowners and community bodies as well as for the government itself.

We have reviewed the three published SSIs (un-numbered; number 137 and number 140) and by and large consider these to reflect much of what was envisaged, but we do have some concerns and therefore welcome this opportunity to provide comment to committee members as you examine the SSIs in advance of them coming into force at the end of next month.

1. Regarding the designation or classification of land, we welcome the additional references to planning policies (clause 4 of the un-numbered SSI) of which regard is to be taken. However, there is no reference to forestry plans, which while not relevant in an urban setting can be very important in terms of a rural context and in our view, regard should be had to whether the land in question, or any part thereof, is part of a forestry plan when determining eligibility. We feel it would be helpful if this could be expressly incorporated within that clause.

2. In terms of the ‘restriction period’ in relation to dealings with the land while an application is pending (clause 11 of the un-numbered SSI), we note that period begins on the date on which a pending application appears on the Register of Applications by Community Bodies to Buy Land. The previous iteration of the regulations stated this period would commence on the date on which the person is notified. We are unclear as to the reason for this change between the draft regulation and the published regulation before you. It would seem that the landowner or other relevant party would now need to proactively check the register to ascertain if an application had been registered. We are concerned that such a significant restriction on ownership rights, prohibiting any transacting with the property, is not directly notified to the landowner in terms of this SSI. We consider this to be an unfortunate amendment from the prior draft and would hope the Committee would see fit to ascertain the reasoning for this and ideally ensure a more appropriate method of direct notification is arrived at. There is no need for service to be
unduly onerous, but on such a fundamental point we strongly feel that the commencement of the restriction period be intimated to the owner.

3. The provision for a community body to share ballot information on request has been deleted and does not appear in the published version of SSI number 140. In the draft, this had included any person with a right to appeal under the Act. Given the clear policy intention of having a transparent approach, and that the ballot itself is to be conducted in a “fair and reasonable manner” (Part 3, Clause 6 of SSI 140) it seems strange that such a straightforward and basic request has been omitted. Again, we would be grateful if the Committee could obtain clarification on this point and ideally seek the ‘re-inclusion’ of such a provision.

We thank you for your consideration of these points in particular and also thank the civil servants involved for their efforts and constructive engagement with us to date.

Yours sincerely

Sarah-Jane Laing
Executive Director

Written Submission from Historic Houses Scotland

Dear Committee Members

Abandoned, Neglected or Detrimental Land – Secondary Legislation

Historic Houses Scotland is pleased to have been engaged with Scottish Government prior to and during the passage of the Community Empowerment (Scotland) Bill. Since the Act was passed and provisions incorporated in the Land Reform (Scotland) Act 2003, we have been in further dialogue regarding the secondary legislation, including in relation to the regulations on abandoned and neglected land, which are of interest to our members who own historic properties and gardens across rural Scotland.

This new form of right to buy whereby a landowner may be compelled to sell his property if it is deemed to be wholly abandoned or neglected, or if the use or management of the land is such that it results in or causes harm, directly or indirectly, to the environmental wellbeing of the community is clearly a substantive power and we recognise the importance of getting the regulations properly drafted for both landowners and community bodies as well as for the government itself.

We have reviewed the three published SSIs (un-numbered; number 137 and number 140) and by and large consider these to reflect much of what was envisaged, but Historic Houses Scotland does have some concerns and therefore welcomes this opportunity to provide comment to committee members as you examine the SSIs in advance of them coming into force at the end of next month.

Regarding the designation or classification of land, we welcome the additional references to planning policies (clause 4 of the un-numbered SSI) of which regard is
to be taken. However, we believe that there is a significant connection represented between an historic asset and its surroundings, and the way the setting contributes to the understanding, appreciation and experience of the asset. The setting may extend beyond the ownership boundary.

The setting of an historic asset may encompass the current landscape and townscape and their character; views and key vistas to and from the asset (intentional or fortuitous); and the relationship of the historic asset with other built and natural features. A site may have setting significance because its present setting contributes to our ability to understand, appreciate and experience the asset, whether it is intended or fortuitous and because the historic asset contributes strongly to its surrounding. The significance will be reinforced if the site has retained its original character, views and vistas, and its historical relationship between the asset and its surroundings.

Significant designed landscapes associated with heritage property may appear unmaintained, but due to historical resonance this may be part of a valid management policy.

Historic Houses Scotland feels it would be helpful if reference to historic /designed landscapes could be incorporated as part of the short list of items of which regard is to be taken.

Andrew Hopetoun
Chairman
Historic Houses Scotland