



Scottish Government
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Consultation on proposals relating to secondary legislation for Part 3 of the Land Reform (Scotland) Act 2003 - the crofting community right to buy as amended by the Community Empowerment (Scotland) Act 2015: Analysis of consultation responses



AGRICULTURE, ENVIRONMENT AND MARINE



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1. Executive Summary

The Community Empowerment (Scotland) Act 2015 amended the Land Reform (Scotland) Act 2003 with regard to the provisions relating to crofting community right to buy which resulted in a number of policy proposals emerging for secondary legislation. The Scottish Government sought views on these from relevant organisations and individuals in a consultation document published on 21 March 2016.

Nine responses were received, eight from organisations; one was from an individual. A summary of views from the responses follows.

Application forms

Whilst most of those providing a view were content with the proposals for the application forms to be used by crofting community bodies (CCBs) for consent to buy eligible croft land and consent to buy the interest of the tenant in tenanted land, there were some suggestions for making the forms simpler and clearer.

A few questions on the forms were highlighted as potentially overburdensome for CCBs, with some of the information requested not readily available.

Recommendations were made for a “test of necessity” to be applied to the questions posed; and to qualify requests for information with wording along the lines of, “to the best of your knowledge”.

Manner of public notice

Whereas most respondents were satisfied with what was proposed regarding manners in which public notice should be given to an application by a CCB, one respondent considered that the public notice should be in writing; another suggested that there should be a site notice and a copy of the notice posted on the website of the relevant local authority.

Right to buy ballot

Most of those who provided a view on how the ballot should be conducted agreed with the proposals set out in the consultation.

Other suggestions were for voting in person; appointing an independent observer to oversee the counting of votes; and being clearer on the criteria for validating the ballot result in terms of thresholds for accepting a majority vote and establishing the minimum turnout acceptable.

Two respondents expressed concern for those with other interests in the land such as fishing or mineral lets; and that there appears to be no requirement for consultation other than with the CCB.

Most respondents agreed with the proposals for making a request for a proxy vote although more time between lodging a proxy vote nomination and the deadline for

returning a ballot paper was requested to allow for the CCB to update its ballot records. It was also proposed that a limit be placed on anyone acting as proxy to do so for a maximum of two electors, other than close relatives.

Most respondents were content with the format of the form for the ballot return proposed, although a few suggestions were made for rationalising the return. Most of those providing a view indicated that they were content with the process outlined for making public the results of the ballot, although two respondents proposed additional online notification.

Respondents were generally supportive of the proposals relating to retention of the ballot papers and were in agreement that there should be a process to deal with requests for documentation relating to the ballot. The process proposed was perceived to be straightforward with only one suggestion for reducing the time period permitted for provision of information from the proposed 28 days to 14 days.

Reimbursement of expenses by Ministers

All but one of the respondents broadly accepted the notion of reimbursement of the expenses of conducting a ballot. A few respondents expressed their view that the outcome of the ballot should be of no consequence in relation to reimbursement of expenses.

All of the respondents who provided a view agreed that the method used by Ministers to calculate the costs should take account of all of the expenses that a CCB incurs in connection with the ballot. There was general agreement that Ministers will need certain information to enable costs to be calculated including vouchers for each item of spend and all documentation relating to the procurement of the ballot, including estimates of costs for services procured.

Respondents agreed in general with the proposed procedure to be followed in connection with the making of an application to Ministers for reimbursement.

Views were requested on proposals for an appeals process. Due to what appears to be mis-reading of the relevant question on this topic it is not possible to ascertain the level of support or opposition to the proposals.

Notification of the Minister's decision on an application

Most respondents were content with the proposed format on notification of the Minister's decision on an application. A few respondents identified text which they considered required re-working.

Compensation

It was generally agreed that amounts payable as compensation in respect of loss or expense incurred by a landowner, persons entitled to sporting interests, or the tenant, should be reasonable and vouched for.

Different views emerged on how to determine what is "reasonable" with suggestions including: Ministerial decision; compensation based on actual loss

incurred and actions required to be taken; market value; or the district valuer's assessment.

Contrasting views were held on whether compensation claims should be assessed on a case-by-case basis, or whether a statutory formula should be developed for determining claims.

Several respondents considered that specification of particular categories of person who can receive compensation may be inappropriate, but instead anyone who can demonstrate loss should be considered.

There were mixed views on the amount of compensation payable in respect of loss or expense. Some respondents proposed that whatever costs are deemed to be reasonable should be compensated for. Others recommended determining compensation on a case-by-case basis due to wide variation in circumstances. A few respondents argued against setting upper limits where expenses can be vouched for and are legitimate; one respondent considered a ceiling should be in place to ensure legal costs do not become disproportionate to the value of the land being purchased.

Respondents agreed with the proposals for the procedure by which an application for a grant to assist a CCB in meeting its liabilities to pay compensation should be made. There was also agreement on the form of the application document for a grant towards compensation liability.

2. Introduction

Part 3 of the Land Reform (Scotland) Act 2003 (the 2003 Act) created a regime in which a CCB, representing an identified crofting community, may acquire eligible croft land (including salmon fishings, mineral rights (except mineral rights to oil, coal, gas, gold or silver)) associated with that crofting community and sporting rights. In addition, a CCB may acquire at the same time, or within a specified period after it has purchased the eligible croft land, the interest of the tenant in tenanted land.

Part 4 of the Community Empowerment (Scotland) Act 2015 (the 2015 Act) amended the 2003 Act provisions, with revisions aimed at making the legislation easier to use for CCBs while ensuring that the legislation continues to strike a fair balance between the rights of landowners and the crofting communities and all parties involved in the legislative process. The 2015 Act received Royal Assent on 24 July 2015.

From the 2015 Act amendments emerged a number of policy proposals for secondary legislation relating to the crofting community right to buy. The Scottish Government sought views on these from relevant organisations and individuals in a consultation document published on 21 March 2016. 22 questions were posed relating to the applications forms to be used; the manner in which the public notice of the application should be given by Ministers; the conduct of the ballot; reimbursement of expenses associated with the ballot; notification of the Minister's decision; and procedures for claiming compensation, amounts payable and by whom.

Views on the policy proposals were invited by 20 June 2016.

Consultation responses

The Scottish Government received nine responses to the consultation. Eight of these were from organisations; one was from an individual. The organisations which responded represented a range of stakeholder categories. All responses were submitted via the online system, Citizen Space, established for consultation responses. Table 2.1 overleaf lists the respondents to the consultation by their category.

Table 2.1: Respondents to the consultation

Respondent	Category of respondent
Argyll and Bute Council	Local Government
Comhairle nan Eilean Siar	Local Government
Shetland Islands Council	Local Government
The Highland Council	Local Government
Shetland Partnership	Community Planning Partnership
Community Land Scotland	Representative body for community landowners
Scottish Land and Estates	Representative body for private landowners
Highlands and Islands Enterprise	Scottish Government's economic and community development agency
Individual respondent	Individual

Analysis of responses

The analysis of responses is presented in the following six chapters which follow the order of the topics raised in the consultation paper. 22 questions were posed by the consultation inviting a mix of closed and open responses. The analysis of responses to these is based on the views of those who responded to the consultation which are not necessarily representative of the wider population and cannot be extrapolated further.

All respondents used Citizen Space to submit their views. This database was exported by the analyst to an Excel database for detailed analysis.

3. Application Forms

Background

A CCB is required to submit its application to exercise its crofting community right to buy to Ministers on a prescribed form (section 73(5) of the 2003 Act (as amended by the 2015 Act)) refers. The application form is also to be accompanied by information that is to be prescribed by Ministers.

The Scottish Government proposes that there should be two application forms to enable a CCB to acquire the land, rights and interest of the tenant in tenanted land under the crofting community right to buy. These are an application for consent to buy eligible croft land; and an application for consent to buy the interest of the tenant in tenanted land.

The consultation contained the proposed forms and views were sought on these.

Question 1: Are you content with the form and questions in the “Application for consent to buy eligible croft land etc.” as set out above?

Eight respondents addressed this question. Five respondents were content; Comhairle nan Eilean Siar, Highlands and Islands Enterprise and Community Land Scotland indicated that they were not content.

Suggestions for improvements to the application form

Five respondents offered suggestions on ways in which the draft application form could be improved. Two main themes emerged:

- simplification; and
- improving clarity of meaning.

It was considered that some of the questions in the application form requested depth of detail which could prove burdensome for CCBs to provide and/or may not be readily available. Questions 3.1, 4.3, 6.1 and 8.2 were highlighted in particular in this respect.

Two ways to address this were proposed. Firstly, Community Land Scotland suggested that a “necessity” test be applied in which the question is posed, “is all the information sought absolutely essential in all respects?”. Likewise, Highlands and Islands Enterprise proposed that it may be helpful to qualify requests for information with “to the best of your knowledge” or “following reasonable enquiry”, with the Declaration section to incorporate a disclaimer that the information is accurate “to the best of your knowledge”.

Highlands and Islands Enterprise requested greater clarity regarding specific words and terms:

- at 3.3 the word “appropriate”; and

- guidance on what is a “relevant feature” with respect to salmon fishings, mineral rights and eligible sporting rights.

They also highlighted possible typographical and wording errors and areas for improvement at: 4.1; 4.6; 4.7; 4.12; 8.6; 8.7; and 8.8.

Scottish Land and Estates expressed concern relating to section 9 on public interest, stating their view that this appeared to be very broad in scope and potentially contentious and suggested that further clarity may be useful. They also considered it potentially helpful for applicants to be transparent regarding how the eventual purchase price is to be funded in order that the amount of public funding involved would be known.

Question 2: Are you content with the form and questions in the “Application for consent to buy the interest of the tenant in tenanted land” as set out above?

Eight respondents addressed this question. Responses were as for question 1 with five respondents expressing content but Comhairle nan Eilean Siar, Highlands and Islands Enterprise and Community Land Scotland indicating that they were not content.

Respondents referred largely to their comments provided at question 1 relating to simplifying the form by requesting only that information which is essential to the application.

Highlands and Islands Enterprise questioned why the applicant is asked whether the tenants’ interest in tenanted land has previously been acquired through Part 3 when the interest of the tenant in tenanted land is the subject of the application.

4. Manner of Public Notice

Background

After Ministers have received an application by a CCB for consent to buy croft land etc, they are required to give public notice of it and of the date by which views from persons under section 73(8) are to be received.

The Scottish Government proposes that the notice be advertised in any or all of: a newspaper circulating in the area where the land or other subjects of the application is located; The Edinburgh Gazette; the Scottish Government website.

Question 3: Are there any other manners in which public notice should be given to an application by a crofting community body for consent to buy croft land etc.?

All nine respondents addressed this question. Of these, seven were satisfied with what was proposed, one welcoming the fact that both printed and electronic media were encompassed.

Scottish Land and Estates considered that the public notice “should be in writing”. Argyll and Bute Council suggested that, in addition, there should be a site notice and a copy of the notice posted on the website of the local authority for the area in which the croft land is situated.

5. Right to Buy Ballot

Conduct of ballot

Background

As part of a crofting community right to buy application, a CCB is required to demonstrate to Ministers that it has the approval of its “crofting community” to its proposal to exercise its right to buy the eligible croft land etc.

The way in which the ballot is to be conducted is set out in section 75 of the 2003 Act and in secondary legislation which specifies how the ballot is to be conducted and how the results are to be published.

The Scottish Government has proposed the way in which the ballot should be conducted. Their proposals include: holding it as a secret postal ballot; the CCB ascertaining the persons eligible to vote as according to the appropriate sections of the 2003 Act; the date and place of the ballot being notified in writing to all eligible voters not less than 10 days prior to the ballot; and each eligible person being provided by the CCB with a stamped addressed envelope for returning the completed ballot paper.

Question 4: Do you agree with the proposals that set out how the ballot should be conducted, as outlined above?

Eight respondents provided a response with six agreeing with the proposals set out.

Highlands and Islands Enterprise suggested that, in addition, the provision for voting in person at a polling station should be considered. Argyll and Bute proposed that an independent observer could usefully be appointed to oversee the counting of votes and certify that the total votes counted and allocated were accurate.

Scottish Land and Estates requested clarity on the criteria for validating the ballot result in terms of the threshold for accepting a majority vote and the minimum turnout percentage acceptable.

Shetland Islands Council and Shetland Partnership both indicated that they disagreed with the proposals, arguing that these ignored those with other interests in the land such as fishing or mineral lets. They also expressed concern that there appears to be no requirement for public consultation other than with the CCB.

Proxy votes

Background

The Scottish Government proposes that a person eligible to vote may make a request in writing to the CCB to be permitted a proxy vote. It is proposed that this request must comply with certain conditions such as stating the name and address of the person eligible to vote and the name and address of the person they wish to appoint as a proxy; and contain a statement to confirm that the eligible voter has consulted the proxy who has agreed to act as proxy and is capable of doing so.

Question 5: Do you agree with the process to make a request for a proxy vote, as outlined above?

Seven respondents agreed with the proposals. Two respondents provided further suggestions.

Argyll and Bute Council proposed that the deadline for lodging a proxy vote nomination be extended from 1700 hours on the day before the date on which the ballot paper must be returned to 48 hours before the ballot, to allow sufficient time for the CCB to update its ballot records.

Scottish Land and Estates suggested that, to be consistent with standard electoral procedure, a limit should be placed on anyone acting as proxy to do so for a maximum of two electors, other than close relatives.

Notification of ballot results

Background

A CCB is required to return its ballot results to Scottish Ministers within 21 days from the date of the ballot, or if the application to exercise the right to buy is made sooner, the date of the application.

The way in which the ballot results are notified or returned to Ministers is set out in section 75(4) of the 2003 Act.

The Scottish Government proposes a form of the return that the CCB must use to notify the result of the ballot, and set out the format of the form in the consultation paper.

Question 6: Are you content with the format of the form for the ballot return, as outlined above?

Seven respondents were content with the format of the proposed ballot return form. Two respondents made further suggestions.

Highlands and Islands Enterprise made two suggestions for rationalising the return. Firstly, they proposed that Questions 1 and 11 be combined as both referred to

contact details for the CCB. Secondly, they considered that question 3 was longwinded and lacked clarity on what information was requested. They recommended re-wording to make this clearer.

Argyll and Bute Council proposed that the form should have a section to be certified by the independent person who oversaw the count process along with the person's contact details.

Public notification of CCB's ballot return

Background

The 2003 Act sets out that Ministers can determine provisions for ascertaining and publishing the number of persons eligible to vote in the ballot, the number who did vote and the numbers of valid votes respectively cast for and against the proposition in the ballot.

The Scottish Government proposes that the CCB should make known to the crofting community and the wider community the ballot results not later than 14 days from the day specified for the return of the ballot papers. This should be made in a newspaper circulating in the vicinity of the community.

Question 7: Are you content with the process that should be used to make public the results of the ballot, as outlined above?

Seven respondents indicated that they were content with the process as outlined. In addition, Argyll and Bute Council and Scottish Land and Estates both proposed notification of the ballot return online, perhaps on the Scottish Government website.

Retention of the ballot papers

Background

The Scottish Government considers that it is good practice to retain ballot papers after a ballot or election has taken place and that the CCB should follow this procedure and retain paperwork associated with the conduct of the ballot for a period of two years after the date by which the ballot papers must be received. The Scottish Government identified five categories of information which the proposed that the CCB must retain.

Question 8: Are you content with the categories of information that the crofting community body must retain in connection with its ballot to ascertain community support to exercise its crofting community right to buy, and the timescale in which that information is to be retained?

All eight respondents who provided a view were generally supportive of the proposals relating to retention of the ballot papers. Argyll and Bute Council,

however, proposed that retention should be for only 12 months, in keeping with other election protocol. This council also recommended that all ballot materials be sealed up after the count and only be opened if there is a formal request made in accordance with the regulations.

Access to the ballot papers

Background

Members of the crofting community, the landowner, or a party with an interest in the land to be purchased under the crofting community right to buy, may wish to gain access to the ballot papers after the ballot has been conducted, for example, as part of an appeal under the 2003 Act.

The Scottish Government proposes that there is a process set up to deal with requests to access any documentation relating to the ballot. It also proposes that within 28 days of a request being made to the CCB, it must make available any information, ballot papers, evidence, requests of records, for inspection by Ministers, or any person with a right of appeal under section 91(2) of the Act.

Question 9: Do you agree that there should be a process to deal with requests for any documentation relating to the ballot?

Question 10: Do you agree with the process that has been set out above?

The responses to these two questions overlapped, with respondents tending to address them together.

All respondents were of general agreement that there should be a process to deal with requests for documentation relating to the ballot. This was seen as providing clarity and being seen to be fair.

The process set out was perceived to be straightforward, with 28 days permitted for provision of information by the CCB being viewed as reasonable by all except for Scottish Land and Estates who argued that 14 days should be sufficient, given that the information should be readily available.

6. Reimbursement of Expenses by Ministers

Circumstances in which application for reimbursement can be made

Background

Usually there are costs to the CCB of undertaking a ballot, such as administrative costs, printing costs and postage. Ministers have set out that they will, in certain circumstances, reimburse the cost of conducting the ballot under the crofting community right to buy provisions. Provision is made in sections 75(6) and (7) of the 2003 Act. Section 75(7) sets out provisions that can be included in the secondary legislation, through regulations.

The Scottish Government proposes that the circumstances in which a crofting community can make an application to Ministers for reimbursement of the expense of conducting a ballot should be:

- a) when the ballot has been conducted as prescribed;
- b) where the eligible voters indicated in favour of the proposition that the CCB exercises its right to buy; and
- c) where the CCB's application for consent to buy croft land, etc. has been considered by Ministers who have notified that decision to the relevant parties.

Question 11: Do you agree with the list of circumstances noted above?

Question 12: Are there any other circumstances that should be included in addition to those set out above?

The responses to these two questions overlapped, with respondents tending to address them together.

Of the nine respondents, Scottish Land and Estates expressed explicit opposition to reimbursement, with all of the others broadly accepting it.

Amongst the supporters, however, three shared the view that the outcome of the ballot, whether in favour or against the right to buy, should be of no consequence in relation to reimbursement of expenses. For example, Comhairle nan Eilean Siar commented:

“It is unfortunate that a vote not to proceed would not be eligible to seek reimbursement of costs. That may act as a disincentive, especially where the vote may be very close. A harsh outcome for the community group that have taken the risk to go to a vote.”

Community Land Scotland recommended that, in order to provide flexibility, Scottish Ministers be given discretion to meet expenses in any other circumstances where they consider this to be warranted.

Scottish Land and Estates, although opposed to the reimbursement, proposed that if this is to be provided for, certain conditions should apply. In particular, they recommended that reimbursement should be limited to factors directly associated with the ballot and all expenses should be fully vouched for with original and detailed invoices. Where there has been third party involvement, they proposed that a clear rationale should be provided for that involvement by the CCB.

Calculating the expense of conducting the ballot

Question 13: Should the method that Ministers use to calculate the costs take account of all of the expenses that a crofting community body incurs in connection with the ballot, or should it only take account of certain costs relating to the ballot?

Six respondents addressed this question with all agreeing that the method that Ministers use to calculate the costs should take account of all of the expenses that a CCB incurs in connection with the ballot. Community Land Scotland proposed that some flexibility is built in to allow for Ministers to meet any other identified expenses they believe are warranted.

Comhairle nan Eilean Siar commented that in a large constituency ballot costs can be significant for a fledgling community organisation; Highlands and Islands Enterprise argued that they could see no justification for reimbursing only part of the costs.

Criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant crofting community body

Background

The 2003 Act provides that Ministers may make regulations which include provisions relating to the criteria to be applied by Ministers in deciding whether to make a reimbursement to the applicant (section 66(7)(c) refers).

The Scottish Government proposes that Ministers will need certain information in order that they can calculate expenses. It proposes that this should be:

- a) a statement detailing all costs that were incurred in connection with the ballot, with each cost item being fully vouched; and
- b) all documentation relating to the procurement of the ballot, including any estimates of costs for services to be procured.

The Scottish Government suggested that Ministers could also apply a number of criteria such as whether the costs are “reasonable”; and whether the costs should be less than a certain sum per head.

Question 14: What criteria should Ministers use when deciding whether to make a reimbursement of ballot costs to a crofting community body?

Eight respondents addressed this question. There was general agreement that Ministers will need the information outlined at a) and b) above.

Three respondents considered that, in addition, Scottish Ministers required to be satisfied that the costs were “reasonable”. The remaining three respondents proposed that CCBs should be required to provide evidence that they had sought competitive quotes in relation to the ballot costs and had taken measures to ensure they achieved value for money in procuring services.

Highlands and Islands Enterprise’s view was that it may not be possible to determine a “reasonable cost” or a certain sum per head when the circumstances of the ballot and availability of organisations and contractors to undertake ballots are so varied.

Procedure to be followed in connection with the making of an application for reimbursement to Ministers

Background

The 2003 Act provides that Ministers may make regulations which include provisions relating to the procedure to be followed in connection with the making of (1) an application for reimbursement to Ministers; (2) an appeal against a decision made by Ministers in respect of an application for reimbursement (section 75(7)(d) refers).

The Scottish Government proposes that an application for the reimbursement of costs in relation to a ballot should be made by:

- a) an application by the CCB to Ministers within 90 days from the date of notification of their decision of an application under section 82;
- b) a claim for expenses to be fully vouched;
- c) a claim for expenses to include all documentation relating to the purchase of services that were used in relation to the ballot, including any estimates of costs.

The Scottish Government also proposed information that should be included in the CCB application for reimbursement of expenses; and documentation to accompany the application.

Question 15: Do you agree with the procedure to be followed when making an application to Ministers?

Eight respondents addressed this question with general agreement from all that the procedure appears appropriate.

Only two substantive additional comments were submitted. Community Land Scotland questioned whether it is necessary to request the names and addresses of all Board members in the application given that a signed statement of two members is required to certify that the details given in the application are accurate.

Highlands and Islands Enterprise agreed with the proposals with the exception of the requirement that CCBs have to wait until the notification of the decision on their right to buy application to make an application for reimbursement of ballot costs. They reiterated their view that eligibility to apply for reimbursement should not be conditional on a vote in favour of exercising the right to buy. They also considered that Ministers should provide an explanation to the CCB in circumstances where the application for reimbursement of ballot costs is refused.

Appeals

Background

The 2003 Act provides that Ministers may make regulations which include provisions relation to making an appeal against a decision made by Ministers in respect of an application for reimbursement of the expense of conducting a ballot under the crofting community right to buy provisions (section 75(7)(d)(ii) refers). In addition, Ministers may also make regulations which set out the persons who may consider such an appeal and the powers of such persons (section 75(7)(d)(ii)(e) and (f) refers).

The Scottish Government proposes that an appeal can be made only by a CCB within 60 days from the date of the submission of the claim, to the Sheriff Court. The court, having considered and reviewed all information received by Ministers and by the CCB making the appeal, can decide whether or not to reimburse the costs, with the court's decision final.

Question 16: Are there any changes that you would make to the appeal process, outlined above?

Eight respondents addressed this question with five stating that there are changes they would like to make and three content with the process outlined.

Despite indicating that changes are required, only one respondent supported their view, suggesting that it would be helpful if the grounds for appeal were detailed (Highlands and Islands Enterprise).

It is possible that some of the five respondents answering yes to this question were actually content with the appeal process but responded erroneously with “yes” to show their agreement rather than “no” for no change.

7. Notification of the Minister's Decision on an Application

Background

The 2003 Act sets out that Ministers are required to notify their decision on a CCB's application to buy eligible croft land, eligible additional land, interests or the interest of the tenant in tenanted land, in a prescribed form (section 82 refers). This form is to include the reasons for the Ministers' decision.

The consultation sets out information which the Scottish Government proposed should be provided by Ministers on their decision including: name of CCB; description of eligible land/sporting interests/interest of the tenant in tenanted land; decision on application and date from which it is effective; conditions attached to consent; and reasons for decision.

Question 17: Are you content with the format of the above?

Six of the eight respondents who addressed this question were content with the format proposed, some stating that the proposals appeared to be reasonable with all relevant information included. The remaining two respondents, Shetland Islands Council and Shetland Partnership, were both content with the format, but provided their view that the text at 4(d) appeared to be contradictory.

8. Compensation

Amounts payable in respect of loss or expense incurred as mentioned in section 89(1) of the Act

Background

Section 89(4) provides that Ministers may specify amounts payable in respect of loss or expense incurred by a landowner, person entitled to sporting interests or tenant, in respect of section 89(1) of the Act.

Question 18: What amounts should be payable as compensation in respect of loss or expense incurred by a landowner, persons entitled to sporting interests or the tenant (as mentioned in section 89(1) of the Act)?

All respondents provided a view on the amount of compensation which should be payable.

It was generally agreed that amounts should be reasonable and vouched for. Different views emerged, however, on ways of determining reasonableness. Suggestions included the court or Ministers deciding what is reasonable; compensation based on actual loss incurred and actions which were required to be taken; market value; or district valuer's assessment.

Shetland Islands Council and Shetland Partnership both recommended that loss of income, loss of investment and blight should be compensated for.

Highlands and Islands Enterprise considered it fair and appropriate to assess compensation claims on a case-by-case basis examining each case in detail. In contrast, Scottish Land and Estates proposed a statutory formula for determining claims at a fair market rent, with disregard to the rights of existing tenants, that is the free open market value of the ground, not a price reflecting that there is a community right.

Community Land Scotland provided their view that the proposed 60 day time limit for agreeing (or otherwise) compensation appears potentially demanding for a CCB which may have to engage with a range of interests in coming to a judgement about how to respond to a compensation claim. 90 days was perceived by Community Land Scotland to be more realistic.

Amounts payable in respect of loss or expense incurred by a person of such other description as may be specified

Background

Section 89(4)(b) provides that Ministers may specify amounts payable in respect of loss or expense incurred by the crofting community right to buy by a person of such other description as may be specified.

Question 19: Who (what persons) should be specified by Ministers in relation to the above?

Six respondents provided a view. A view shared by several was that specification of particular categories of person may be inappropriate, but instead anyone who can demonstrate a loss could potentially receive compensation. For example:

“It may be possible to provide a general statement stating the characteristics of such a person, but not the ‘types’ of person” (Highlands and Islands Enterprise).

The view of Comhairle nan Eilean Siar was that only landowners or those with sporting rights or mineral rights separate from landowners should be specified by Ministers as eligible.

Question 20: What amounts should be payable as compensation in respect of loss or expense by these persons (in section 89(4)(b) of the Act)?

Six respondents addressed this question. Four proposed that compensation should cover whatever expenses are deemed to be reasonable. Community Land Scotland and Highlands and Islands Enterprise both recommended that compensation be determined on a case-by-case basis as expenses could vary considerably depending on factors such as value of land, size of area, complexity of land use, and so on.

Scottish Land and Estates highlighted their general opposition to limits being set on compensation receivable by landlords and others affected by a crofting community right to buy application. They argued that arbitrary or absolute limits would not be helpful, rather guidance on types of expense would be of more use. Shetland Islands Council and Shetland Partnership both agreed that there should be no limit on the amount where losses can be vouched. Where losses are consequential they recommended that these should be determined by Ministers.

In contrast, Comhairle nan Eilean Siar considered that compensation should be limited to the valuation of assets and a ceiling should be in place to ensure legal costs do not become disproportionate to the value of land being purchased under the legislation.

Application for a grant towards compensation liability: application form

Background

Ministers may, in certain limited circumstances, pay a grant to a CCB to assist it in meeting its liabilities to pay compensation with its exercise of the crofting community right to buy (section 90). The consultation document set out proposals for the procedure by which an application for such a grant should be made. It also set out the proposed form of application.

Question 21: Are there any changes you would make to the application process outlined above?

Eight respondents addressed this question with all agreeing that the application process appeared to be reasonable as proposed with no changes suggested.

Question 22: Do you agree with the form of the application form for a grant towards a crofting community body's liabilities to pay compensation, set out above?

Of the six respondents who answered this question, all stated that they agreed with the form of the application form for a grant.

The individual respondent also proposed that if the CCB has funds in its accounts earmarked for other purposes (including revenue requirements), this should not make it ineligible for a grant. Nor should it be necessary for the CCB to make an exhaustive search for other ways of raising funds before a grant is payable.

Highlands and Islands Enterprise sought clarification on whether compensation has to be paid directly to the CCB (which they assume) or whether it can be paid to the 'beneficiary', that is, the party affected.



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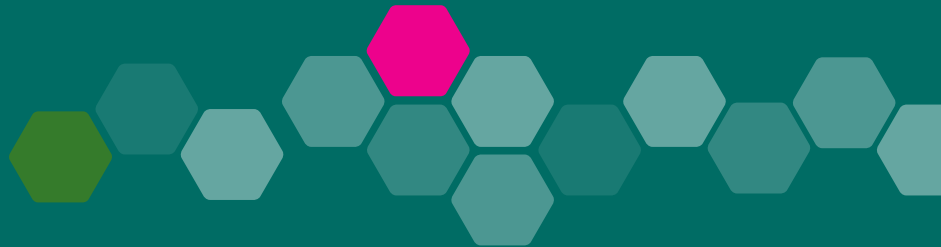
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