

Local Government, Housing and Planning Committee

26th Meeting, 2023 (Session 6)

Tuesday, 7 November 2023

SSI cover note for: Title Conditions (Scotland) Act 2003 (Conservation Bodies and Rural Housing Bodies) (Miscellaneous Amendment) Order 2023

SSI 2023/278

Title of Instrument: Title Conditions (Scotland) Act 2003 (Conservation Bodies and Rural Housing Bodies) (Miscellaneous Amendment) Order 2023

Type of Instrument: Negative

Laid Date: 2 October 2023

Circulated to Members: 5 October 2023

Meeting Date: 7 November 2023

Minister to attend meeting: No

Motion for annulment lodged: No

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

Reporting deadline: 20 November 2023

Recommendation

1. The Committee is invited to consider any issues which it wishes to raise in respect of this instrument.
2. An electronic copy of the instrument is available at: [The Title Conditions \(Scotland\) Act 2003 \(Conservation Bodies and Rural Housing Bodies\) \(Miscellaneous Amendment\) Order 2023](#)

3. Copies of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

Purpose

4. The Policy Note explains that the purpose of the Order is “To prescribe a body as a Conservation Body and to prescribe three bodies as Rural Housing Bodies.”

5. The Policy Note further explains that the Title Conditions (Scotland) Act 2003 grants powers to Scottish Ministers to prescribe certain bodies as conservation bodies. The instrument amends the 2003 Act to add “The Lifescape Project Limited” to the list of such bodies. A list of all currently prescribed conservation bodies is attached at Annexe A of the Policy Note.

6. The Policy Note further explains that the Order also amends the 2003 Act by adding three bodies, Argyll and Bute Council, Hebridean Housing Partnership Limited and Urras Oighreachd Ghabhsainn, to the schedule of prescribed rural housing bodies. A list of all currently prescribed rural housing bodies is attached at Annexe B of the Policy Note.

Delegated Powers and Law Reform Committee consideration

7. At its meeting on 24 October 2023¹ the DPLR Committee considered the instrument and agreed not to draw it to the attention of the relevant lead committee.

Procedure for Negative Instruments

8. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

9. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,
Local Government, Housing and Planning Committee**

¹ <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2023/10/25/32a8b16a-1b36-4f97-8256-d5d6b500a2c3#f4ba8f7e-f238-4b16-b203-50ce74ceb4b4.dita>

Annexe A

Scottish Government Explanatory Note

EXPLANATORY NOTE

EXPLANATORY NOTE (This note is not part of the Order)

Article 2 of this Order amends the list of prescribed conservation bodies in the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2004 to include the Lifescape Project Limited. Conservation bodies are bodies in favour of whom it is competent to create a conservation burden under section 38(1) of the Title Conditions (Scotland) Act 2003.

Article 3 of this Order amends the list of prescribed rural housing bodies in the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 to include Argyll and Bute Council, Hebridean Housing Partnership Limited and Urras Oighreachd Ghabsainn (also known as the Galson Estate Trust). Rural housing bodies are bodies in favour of which it is competent to create a rural housing burden comprising a right of pre-emption under section 43(1) of the Title Conditions (Scotland) Act 2003.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Civil Law and Legal System Division, GW. 15, St Andrew's House, Regent Road, Edinburgh, EH1 3DG.

POLICY NOTE

THE TITLE CONDITIONS (SCOTLAND) ACT 2003 (CONSERVATION BODIES AND RURAL HOUSING BODIES) (MISCELLANEOUS AMENDMENT) ORDER 2023

SSI 2023/278

The above instrument was made in exercise of the powers conferred by sections 38(4) and 43(5) of the Title Conditions (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to negative procedure.

Summary Box

To prescribe a body as a Conservation Body and to prescribe three bodies as Rural Housing Bodies.

Policy Objectives

Conservation bodies

Section 38(4) of the 2003 Act grants Scottish Ministers the power to prescribe certain bodies to be conservation bodies. Bodies which are so prescribed may have conservation burdens created in their favour. Conservation burdens are conditions in the title deeds of property that ensure the preservation or protection of architectural, historical or other special characteristics of land for the benefit of the public. A conservation body is entitled to enforce conservation burdens created in its favour.

This Order makes an amendment to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 by adding The Lifescape Project Limited to the list of prescribed conservation bodies. The power to make this Order may only be exercised where the object or function, or one of the principal objects or functions, of the body concerned preserve or protect, for the benefit of the public, the architectural, historical or other special characteristics of any land (in accordance with section 38(5)). The Lifescape Project Limited complies with this requirement.

The Lifescape Project Limited application is seeking designation as a conservation body. They are seeking conservation body designation in order for them to create conservation burdens with the aim to preserve or protect biodiversity, or the ecological gains undertaken to areas of land for future generations. Their plan is to engage and work with other landowners to do so where they can across Scotland.

This Order amends the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (S.S.I. 2003/453) by adding The Lifescape Project Limited, to the schedule of prescribed conservation bodies.

Previous amending Orders designating conservation bodies were laid in 2003, 2004, 2006, 2007, 2008, 2012, 2013, 2015 and 2016. **Annex A** provides a list of all currently prescribed conservation bodies to date.

Rural housing bodies

Section 43(5) of the 2003 Act provides that Scottish Ministers may prescribe such body as they think fit to be a rural housing body. Section 43(6) of the Act provides that the power conferred by subsection (5) may be exercised in relation to a body only if the object, or function, of the body (or, as the case may be one of its principal objects or functions) is to provide housing or land for housing.

Section 43(1) of the 2003 Act allows for the creation of a real burden over rural land which comprises a right of pre-emption in favour of a rural housing body. This is known as a rural housing burden. The imposition of such a burden means that when such land is being sold, the rural housing body has the right to purchase it, or repurchase it, as the case may be. In essence, it enables the rural housing body to control future sales. Ministers also have the power, under section 43(8) of the 2003 Act, to determine that a body shall cease to be a rural housing body.

The right to repurchase may only be used over rural land. Rural land means land other than excluded land. Excluded land has the same meaning as in Part 2 of the Land Reform (Scotland) Act 2003, which, following amendments made by the Community Empowerment (Scotland) Act 2015, now means “land consisting of a separate tenement (i.e. interest in land) which is owned separately from the land in respect of which it is exigible”. This definition is subject to exceptions for land consisting of salmon fishings and certain mineral rights.

This Order amends the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 (S.S.I. 2004/477) by adding three bodies, Argyll and Bute Council, Hebridean Housing Partnership Limited and Urras Oighreachd Ghabhsainn, to the schedule of prescribed rural housing bodies.

Argyll and Bute Council, Hebridean Housing Partnership Limited and Urras Oighreachd Ghabhsainn comply with the requirements of section 43(6) of the 2003 Act.

Previous amending Orders designating rural housing bodies were made in 2004, 2006, 2007, 2008, 2013, 2014, 2017 and 2019. **Annex B** provides a list of all currently prescribed rural housing bodies to date.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Consultation

No formal consultation was required to be carried out in relation to this Order. Applicants either meet the terms of the legislation (Conservation Body or Rural Housing Body) or they do not.

Impact Assessments

An equality impact assessment (EQIA) has been undertaken covering both conservation body and the rural housing bodies applications and [is attached here](#). This was to ensure that the policy for rural housing bodies which is to provide

housing with the protection of the rural housing burden to keep such properties affordable does not have any impact on equality issues. No issues were identified. The conservation burden was also considered as due to the potential to protect or preserve architectural, historical or other special characteristics of land for the benefit of the public. It was also concluded that it does not have any impact on equality issues.

A Business and Regulatory Impact Assessment (BRIA) has been completed for rural housing bodies and [is attached here](#).

A pre-screening Strategic Environment Assessment (SEA) was completed for the conservation body and concluded that no fuller SEA was required to be undertaken. This can be found on the SEA register.

There are no equality/children's/privacy, etc. impact issues. No further impact assessments were undertaken.

Financial Effects

Rural Housing Bodies

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that overall this is a positive impact on existing businesses in the area. By providing affordable housing this will work towards retaining local people. It may also support the attraction and retention of suitably qualified essential workers in the area to support business growth. This will contribute to sustaining existing businesses and possibly have the potential to attract new businesses.

Conservation Body

The Minister for Victims and Community Safety confirms that no BRIA is necessary as the regulations for Conservation Bodies have no financial effects on the Scottish Government, local government or on business.

Scottish Government
Civil Law and Legal System Division
Justice Directorate

September 2023

ANNEX A: LIST OF PRESCRIBED CONSERVATION BODIES**Part 1 Local Authorities**

| | |
|-------------------------------|-----------------------------|
| Aberdeen City Council | Highland Council |
| Aberdeenshire Council | Inverclyde Council |
| Angus Council | Midlothian Council |
| Argyll and Bute Council | Moray Council |
| City of Edinburgh Council | North Ayrshire Council |
| Clackmannanshire Council | North Lanarkshire Council |
| Comhairle nan Eilean Siar | Orkney Islands Council |
| Dumfries and Galloway Council | Perth and Kinross Council |
| Dundee City Council | Renfrewshire Council |
| East Ayrshire Council | Scottish Borders Council |
| East Dunbartonshire Council | Shetland Islands Council |
| East Lothian Council | South Ayrshire Council |
| East Renfrewshire Council | South Lanarkshire Council |
| Falkirk Council | Stirling Council |
| Fife Council | West Dunbartonshire Council |
| Glasgow City Council | West Lothian Council |

Part 2 Other Bodies

| | |
|---|---|
| Alba Conservation Trust | Solway Heritage |
| Aberdeen City Heritage Trust | Stirling City Heritage Trust |
| Castles of Scotland Preservation Trust | St Vincent Crescent Preservation Trust |
| Chapleton Community Interest Company | Strathclyde Building Preservation Trust |
| Dundee Historic Environment Trust | Tayside Building Preservation Trust |
| Edinburgh World Heritage Trust | The John Muir Trust |
| Glasgow Building Preservation Trust | The National Trust for Scotland for Places of Historic Interest or Natural Beauty |
| Highland Buildings Preservation Trust | The Royal Society for the Protection of Birds |
| Historic Environment Scotland | The Scottish Wildlife Trust |
| Inverness City Heritage Trust | The Trustees of The Landmark Trust |
| New Lanark Trust | The Woodland Trust |
| Plantlife - The Wild-Plant Conservation Charity | Tornagrain Conservation Trust |
| Scottish Natural Heritage | United Kingdom Historic Building Preservation Trust |
| Sir Henry Wade's Pilmuir Trust | |

ANNEX B: LIST OF PRESCRIBED RURAL HOUSING BODIES

| | |
|---|--|
| Albyn Housing Society Limited | Isle of Jura Development Trust |
| Arran Development Trust | Kilfinan Community Forest Company |
| Argyll Community Housing Association | Lochaber Housing Association Limited |
| Barra and Vatersay Housing Association Limited | Muirneag Housing Association Limited |
| Berneray Housing Association Limited | Mull and Iona Community Trust |
| Buidheann Taigheadais na Meadhanan Limited | North West Mull Community Woodland Company Limited |
| Buidheann Tigheadas Loch Aillse Agus An Eilein Sgitheanaich Limited | Orkney Islands Council |
| Cairn Housing Association Limited | Pentland Housing Association Limited |
| Colonsay Community Development Company | Rural Stirling Housing Association Limited |
| Comhairle nan Eilean Siar | Taighean Ceann a Tuath na'Hearadh Limited |
| Community Self-Build Scotland Limited | The Highland Housing Alliance |
| Craignish Community Company Limited | The Highlands Small Communities' Housing Trust |
| Dormont Passive Homes (Scotland) Ltd | The Isle of Eigg Heritage Trust |
| Down to Earth Solutions Community Interest Company | The Isle of Gigha Heritage Trust |
| Dumfries and Galloway Small Communities Housing Trust | The North Harris Trust |
| Dunbritton Housing Association Limited | Tighean Innse Gall Limited |
| Ekopia Resource Exchange Limited | West Harris Trust |
| Fyne Homes Limited | West Highland Housing Association Limited |
| Fyne Initiatives Limited | West Highland Rural Solutions Limited |
| HIFAR Limited | Yuill Community Trust C.I.C. |