

Rural Housing Bodies & Rural Housing Burdens: A Short Guide For Community Landowners

Background

The Scottish Executive began a programme of property law reform with the Abolition of Feudal Tenure etc. (Scotland) Act in 2000. This Act abolished the feudal system of land tenure, and was followed by the Title Conditions (Scotland) Act 2003. Together, these pieces of legislation have provided a modern and simplified framework for property ownership in Scotland.

Feudal burdens have been abolished; however real burdens do still exist and the Title Conditions Act restated and clarified the law of real burdens and stipulated rules for the creation, enforcement and extinction of real burdens. (*A real burden is an obligation affecting land or buildings; it is a condition of ownership.*)

Of special interest to community landowners will be rural housing burdens, introduced by the 2003 Act, which are created in favour of a rural housing body. A rural housing burden is a special type of *pre-emption right* allowing a rural housing body the opportunity to buy back property it has sold for the provision of affordable rural housing. (*A right of pre-emption is an entitlement to have the first option to buy back the property in the event of it coming up for sale.*)

Rural housing burdens, rural housing bodies and their consequences for the community land sector are discussed further below.

Rural Housing Burdens

Rural housing burdens are intended for use by certain bodies – rural housing bodies - which sell land in the interests of providing housing in rural areas. These burdens may only be created over rural land: generally in settlements of under 10,000 people. A full list of excluded areas where this is not applicable can be found in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009 (SSI 2009/207).¹

A rural housing burden may be created by anyone but may only be in favour of a rural housing body, and the consent of that rural housing body is required². By creating a rural housing burden over a property, a rural housing body will have a personal pre-emption right when selling that property. This will give them the right to repurchase the property in the event of it coming up for sale, and as a consequence, the ability to control future sales. When the house is to be sold, the owner has to offer it to the rural housing body, which has 42 days to accept the offer.³

Importantly, the rural housing body will not lose the right of pre-emption if it is not exercised; if the right is not exercised when the property is being resold, it will lie dormant until the next sale ie the rural housing burden conditions stay in the Title forever⁴.

The terms of the rural housing burden may be freely negotiated with the purchaser and could for example detail the terms and price at which the property could be bought back. That provision could be used to allow the rural housing body to buy back the property at a pre-determined price when resold.

¹ Section 43(9), Title Conditions (Scotland) Act 2003 (asp 9)

² Section 43(2)

³ Section 84(3)

⁴ Section 84(1)

Rural Housing Bodies

Rural housing bodies are prescribed by Scottish Ministers, who maintain a list of such bodies⁵. Names can be added or removed from that list – see below for details of how to apply for designation as a rural housing body.

The object or function of the rural housing body – or one of its main objects or functions – must be the provision of housing on rural land, or the provision of rural land for housing.⁶

Options for Community Landowners

Affordable housing is a key issue for many communities, and community landowners will often be keen to use their land to help address the problem. However provision of rental properties by community bodies is not necessarily a straightforward option, and sometimes the involvement of mainstream housing providers in delivering housing for rent is resisted on account of perceived lack of local control over lettings, or the nature of the housing which is often developed.

Release of land for affordable self-build plots can be an appropriate alternative, but community landowners will be anxious to see such housing retained in the affordable sector, and avoid the speculation which in many areas has resulted in the present lack of affordable housing.

Rural housing burdens provide a mechanism whereby land (or indeed housing) can be released by community landowners, but retained in the affordable sector. There are two possibilities:

1. The community landowner releases the property with a burden in favour of a suitable rural housing body attached (with their agreement – this could be one of the larger housing bodies).
(Then subsequent control of sales rests with the rural housing body through the right of pre-emption); or
2. The community landowner itself becomes designated as a rural housing body, and releases property with a burden attached in favour of themselves.
(Subsequent control of sales rests with the community landowner)

The application to become a rural housing body is not unduly onerous (see below), however if the community landowner feels they will have difficulty in exercising their right of pre-emption (eg for financial reasons), they may prefer to pursue option (1). That said, the presence of the burden itself, in perpetuity, will serve to depress the open market value of the property to some extent anyway, which will help to keep it affordable.

Designation as a rural housing body may also bring community bodies eligibility for certain funding streams, or access to other useful programmes. For example, the National Forest Land Scheme (NFLS) operated by Forestry Commission Scotland, through which communities can apply to acquire national forest land for general purposes, also includes a measure which releases land for affordable housing at a value which reflects that use.

To be eligible for that measure, the applicant must be “a Registered Social Landlord or other appropriate housing body. Other appropriate housing bodies can include applicants, designated as Rural Housing Bodies under the Title Conditions (Scotland) Act 2003, which provide building plots or houses for sale” (p21, NFLS Guidance). It should be noted however that other criteria also apply, and eligibility does not guarantee approval - any application requires to be evaluated by an independent panel and approved by the Director Forestry Commission Scotland.

⁵ Section 43(5)

⁶ Section 43(6)

Application for Designation as a Rural Housing Body

If an organisation wishes to become designated as a rural housing body, they should apply in writing to the Scottish Government (Civil Law Division), outlining in their letter how they intend to use rural housing body status. They should also enclose a copy of their constitution (to demonstrate that this does include the appropriate objects or functions as described above).

If the organisation's constitution does not already include the necessary objects or functions (ie the provision of housing on rural land or the provision of rural land for housing), then it must be amended prior to application to the Scottish Government.

Following application as described, the Government will write to the organisation saying they are considering the application and taking advice on it from a solicitor. When this has been concluded positively, applications will be 'batched' (unless very urgent) so that they can be laid before parliament in groups (the formal process of designation is by Statutory Instrument in parliament). When the Scottish Statutory Instrument (SSI) is laid thereafter, the Government will write to the applicant organisation advising them that their application has been approved by ministers, that the SSI has been laid, and advising them of when it comes into force.

Hence the process of application is straightforward, although it may take some time before the relevant SSI can be laid before parliament. The Scottish Government is keen to see community organisations apply for rural housing body status, and make use of the powers available to them.

Contacts:

Scottish Government:
Family and Property Law
Civil Law Division
Scottish Government
2W St Andrew's House
Edinburgh
EH1 3DG

This guidance note has been produced to provide guidance for community landowners on rural housing bodies and rural housing burdens. While it is intended to provide an accurate reflection of the main issues, it does not cover all the detail included within the legislation. We strongly recommend that professional and legal advice be sought for more detailed information and guidance on specific cases.

References

Title Conditions (Scotland) Act 2003 (asp 9):

http://www.opsi.gov.uk/legislation/scotland/acts2003/asp_20030009_en_1

Scottish Statutory Instruments:

<http://www.opsi.gov.uk/legislation/scotland/s-stat>

Title Conditions (Scotland) Act 2003 – Scottish Government webpage:

<http://www.scotland.gov.uk/Topics/Justice/law/17975/11022>