These documents relate to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the
Scottish Parliament on 27 November 2001

LAND REFORM (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Land Reform (Scotland) Bill introduced in the Scottish Parliament on 27 November 2001:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 44–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

PART 1: ACCESS RIGHTS

Section 1: Creation of access rights

4. This section creates a right of access to land for recreational purposes, and a right to cross land for the purpose of getting from one place to another (subsections (1) to (3)). “Land” is defined in section 29 to include bridges and other structures built on or over land, inland waters, canals and the foreshore.

5. Subsection (4) clarifies that access rights apply above and below ground, as well as on the surface of the land. This means that access rights extend to such activities as caving and paragliding. Subsection (5) provides that access rights are exercisable over all land unless it falls within a class of land specified in or under section 6 of the Bill.

Section 2: Access rights to be exercised responsibly

6. Section 2 provides that access rights must be exercised responsibly, and makes provision for determining what is a responsible exercise of access rights. The presumption is that a person will be exercising access rights responsibly if they are not interfering unreasonably with the rights of others.

7. Paragraph (2)(a) goes on to provide that a person engaging in any conduct falling within section 9 or within any byelaw made under section 12(1)(a)(i) of the Bill, or who does anything disregarding steps taken by Scottish Natural Heritage (SNH) under section 26, will not be exercising access rights responsibly. Paragraph (2)(b) also provides that regard will be had to whether a person has contravened any rule of responsible conduct set out in the Scottish Outdoor Access Code which applies to persons exercising access rights or has disregarded any request by SNH under section 26. Subsection (3) defines the responsible exercise of access rights.

Section 3: Reciprocal obligations of owners

8. This section places a reciprocal requirement on owners of land to act responsibly in respect of land subject to access rights. Subsection (1) places a general duty on owners to act responsibly in using and managing their land or otherwise conducting their ownership of it.
9. Subsection (2) makes provision for determining whether an owner is acting responsibly. The presumption is that an owner is acting responsibly if that owner is not interfering unreasonably with the exercise of access rights over the owner’s land. Paragraph (a) goes on to provide that a contravention of sections 14(1) or (3) or 22(2) of the Bill is irresponsible. These sections relate to actions undertaken for the purpose, or main purpose, of preventing or deterring the exercise of access rights; failure to comply with a notice in respect of such an action served by a local authority; and failure to notify a local authority of the ploughing of a path, or failure to reinstate the path, within the time required. In addition, contravention of any byelaw made under section 12(1)(a)(ii) is irresponsible. Paragraph (b) also provides that regard will be had to contravention of any rule of responsible conduct set out in the Access Code and incumbent on the owners of land. Subsection (3) defines responsible land ownership in relation to access rights.

Section 4: Modification of sections 2 and 3 and enactments referred to in them

10. This section provides a power for Ministers to modify any of the provisions of sections 2, 3, 9, 14 and 22 by way of an order. The parliamentary procedure for making such an order is set out in section 95(5). Under subsection (2), such an order could apply generally or be restricted to certain areas or to certain classes of land or could apply to particular ways of exercising access rights or to particular types of land management activity.

Section 5: Access rights, reciprocal obligations and other rules and rights

11. This section sets out the relationship between the access rights created by the Bill and existing rights as well as making provision for the effect of access rights on occupiers’ liability. As a general rule, access rights will not diminish or displace existing rights.

12. Subsection (1) provides that the exercise of access rights does not by itself amount to trespass.

13. Subsection (2) provides that the operation of Part 1 of the Bill, including the exercise of access rights, will not affect the duty of care owed by an occupier to any person present on the land. For example, the fact that someone was exercising access rights when injured is irrelevant to the question of whether a duty of care arises on the part of the occupier of the land.

14. Subsections (3) and (4) provide that access rights do not diminish or displace existing rights of access to land or public rights in relation to the foreshore. Subsection (5) provides that the exercise of access rights created by the Bill over particular land cannot by itself be used to claim a public right of way or servitude or a public right of navigation.

15. Subsection (6) provides that access rights do not constitute a public right of passage. Subsection (7) makes clear that a person exercising access rights is not exempt from the provisions relating to obstruction by pedestrians in section 53 of the Civic Government (Scotland) Act 1982.
Section 6: Land over which access rights not exercisable

16. This section sets out the categories of land over which the access rights will not be exercisable and is supplemented by section 7.

17. Paragraph (a) excludes from access rights buildings of all kinds and industrial plant and machinery, as well as caravans and tents used by someone to afford them privacy or shelter.

18. Paragraph (b) also excludes the land surrounding and associated with non-domestic buildings and industrial plants. In relation to domestic buildings, specific further provision is made to ensure the privacy of persons who reside there by excluding sufficient adjacent or associated land around such buildings and section 7(4) lists some of the factors which can be used to determine the extent of his exclusion. In relation to school buildings, that same paragraph excludes land adjacent to the school. School playing fields at some distance from a school would not be covered by this exclusion but may be governed by the exclusion in paragraph (f) below. “School” is defined in section 7(3) and includes pre-school facilities.

19. Paragraph (c) exclude private gardens to which there is a right of common access, such as Queen Street Gardens in Edinburgh.

20. Paragraph (d) confirms that access rights will not affect any existing statutory provisions that may allow public access to land to be prohibited, excluded or restricted. This would include, for example, military establishments and railways. Section 7(5) clarifies that this exclusion only applies to the extent of any prohibition, exclusion or restriction by or under another enactment.

21. Paragraph (e) excludes land held by the Queen in Her private capacity, such as Balmoral, to facilitate the protection of Her Majesty’s security.

22. Paragraph (f) provides that access rights are not exercisable over sports or playing fields while they are in use, or land laid out for a recreational purpose when in use for that purpose. The latter is further qualified by section 7(6) to nevertheless allow the exercise of access rights in a way which does not interfere with the recreational use to which the land is being put.

23. Paragraph (g) provides that land in respect of which a charge was levied for public admission for at least 90 days prior to 31 January 2001, and for which a charge continues to be levied for the same period after that date, will be excluded from access rights.

24. Paragraph (h) excludes from access rights areas where building, civil engineering or demolition work is underway, or where a statutory undertaker is carrying out work. “Statutory undertaker” is defined in section 29.

25. Paragraph (j) provides that access rights are not exercisable over land on which crops have been sown or are growing. A definition of “crops” is provided in section 7(8) and will be supplemented by further guidance in the Access Code drawn up under section 10.
26. Paragraph (k) confirms that access rights are not exercisable over land specifically excluded in an order made under section 11 or in byelaws made under section 12.

Section 7: Provisions supplementing and qualifying section 6

27. Subsection (1) and (2) limit the extent of the exclusion in section 6 in respect of land on which a development is being carried out which requires planning permission. Accordingly, the exclusion only applies while the development is being carried out and only to the extent that the development is in conformity with any planning permission.

Section 8: Adjustment of land excluded from access rights

28. This section sets out the powers of Ministers to make an order modifying sections 6 and 7. The parliamentary procedure for making such an order is set out in section 95(5). Subsection (2) provides that an order under subsection (1) may be made in general terms, or it may refer to particular areas, locations or classes of land in respect of which access rights are exercisable.

Section 9: Conduct excluded from access rights

29. This section sets out the conduct which is outwith the scope of access rights.

30. Subsection (1) sets out general conduct which is excluded from access rights, such as the use of motorised forms of transport, criminal conduct, conduct in breach of a court order or being on a golf course for recreational purposes.

31. Subsection (2) sets out specific activities which are excluded from access rights. For example, paragraph (a) excludes commercial activities. However, this exclusion only applies to the commercial exploitation of land by third parties and does not exclude the exercise of access rights by persons taking advantage of the facilities provided by commercial concerns. Section 4 enables Ministers to modify the provisions of this section by order.

Section 10: The Scottish Outdoor Access Code

32. Subsection (1) places a duty on SNH to produce the Scottish Outdoor Access Code setting out responsible conduct on the part of both those exercising access rights and the owners of land subject to such rights.

33. Subsections (2) to (4) set out the procedures which apply in respect of the preparation and approval of the Access Code. Subsection (5) requires that any Code must be approved by the Scottish Parliament before it comes into operation.

34. Subsection (7) places a duty on SNH and local authorities to publicise the Access Code, and requires SNH to promote compliance with it. Subsections (8) and (9) place a duty on SNH to keep the Access Code under review, and provide for its modification subject to the same procedures as apply to its initial approval.
Section 11: Power to exempt particular land and exclude particular conduct from access rights

35. Subsection (1) enables local authorities, whether on applications from third parties or on their own initiative, to exempt a particular area of land from access rights, or to exclude particular activities from or restrict particular activities in relation to access rights. Any exemptions can be limited to certain time periods, such as “hours of darkness”.

36. Subsection (2) requires a local authority to consult the public generally, the owner of the land in question and any other person considered appropriate, and to publicise the intended effect of any proposed order, prior to making the order.

37. Subsections (3) and (4) provide that the order must specify its duration and if that exceeds 30 days, then it must be confirmed by Ministers.

38. Subsection (6) places a duty on Ministers, prior to confirming any order, to consider any objections or representations received and provides that they may hold an inquiry to enable them to decide whether to confirm the order. If an inquiry is held, subsection (7) applies the same procedures as apply to local inquiries under planning legislation.

39. Subsection (8) sets out Ministers’ powers in relation to the order and subsection (9) makes provision for the date from which an order takes effect. Subsection (10) provides that local authorities have the power to revoke, amend or re-enact any order made by them under this section.

Section 12: Byelaws in relation to land over which access rights are exercisable

40. This section sets out a local authority’s powers to make byelaws. Paragraph 7 of schedule 2 amends the Civic Government (Scotland) Act 1982 in consequence of this new byelaw making power.

41. Subsection (1) sets out the general purposes for which byelaws can be made and subsection (2) sets out some particular examples of matters which might be addressed by byelaws.

42. Subsection (3) clarifies that any byelaws made under this section must not interfere with the exercise of any public right of way or of navigation, or with any functions of a statutory undertaker as defined in section 29.

43. Subsection (4) applies the process for the confirmation of byelaws by Ministers set out in the Local Government (Scotland) Act 1973 to the making of byelaws under this section, subject to the modifications specified in subsection (5). Subsections (6) and (7) set out the rules which apply to the making of byelaws by local authorities under this section. These provide for a transparent and consultative process. Subsection (8) sets out the circumstances when the requirement to consult the persons or bodies mentioned in subsection (7) can be relaxed.
Section 13: Duty of local authority to uphold access rights

44. This section places a duty on local authorities to uphold the exercise of access rights and enables them to institute and defend legal proceedings and generally to take any necessary steps in carrying out this duty.

Section 14: Prohibition signs, obstructions, dangerous impediments etc.

45. Subsection (1) prohibits an owner from doing certain things for the purpose, or for the main purpose, of preventing or deterring the exercise of access rights.

46. Subsection (2) allows local authorities, by written notice, to require the owner to take such remedial action as is specified in the notice within such reasonable time as is specified, if anything has been done in contravention of subsection (1).

47. Where an owner fails to comply with a notice served under subsection (2), subsection (3) enables the local authority to take remedial action and to recover any reasonable costs from the owner.

48. Subsection (4) provides a right of appeal against a notice by summary application to the sheriff. Subsection (6) enables Rules of Court to set out the procedures governing such appeals.

Section 15: Measures for safety, protection, guidance and assistance

49. Subsection (1) permits local authorities to take steps to warn and protect the public against any danger on any land in respect of which access rights are exercisable, and to indicate or enclose recommended routes over or to give directions to, such land.

50. Subsection (2) provides a similar power to that in section 14(2) in respect of remedial action to remove things constituting a danger to public safety. Subsection (3) applies the same procedures as set out in section 14(3) to (5).

51. Subsection (4) permits local authorities to take measures to facilitate the exercise of access rights.

52. Subsection (5) permits local authorities to provide staff or life saving equipment in respect of inland waters subject to access rights.

53. Subsection (6) places a duty on local authorities to have regard to the needs of persons with disabilities when exercising powers under this section.

54. Subsection (7) requires local authorities to obtain the permission of the owner of the land before carrying out any measures under subsections (4) to (5).
Section 16: Acquisition by local authority of land to enable or facilitate exercise of access rights

55. Subsection (1) enables local authorities to acquire land either by agreement or, with the consent of Ministers, compulsorily, where necessary or expedient to enable or facilitate the exercise of access rights.

56. Subsection (2) excludes certain land from the scope of subsection (1), such as land to which access is statutorily restricted or prohibited and sports or playing fields.

57. Subsection (3) requires the local authority to hold and manage any land acquired in a way that best facilitates the exercise of access rights.

58. Subsection (4) applies to any compulsory acquisition of land the procedures set out in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 which generally apply to the compulsory purchase of land in Scotland.

Section 17: Core paths plan

59. Subsection (1) sets out the requirement on a local authority to draw up, within 2 years, a plan for a system of core paths sufficient to provide reasonable public access throughout its area.

60. Subsection (2) provides that core paths can include existing paths or paths to be delineated under existing legislation or under sections 20 and 21 of the Bill.

61. Subsection (3) sets out the criteria which a local authority must have regard to in drawing up the plan. Subsection (4) provides that the plan may take the form of a map, or include or refer to maps.

62. Subsections (5) to (7) make provision for Ministers to give general or particular guidance to local authorities on the drawing up of plans, and for local authorities to have regard to such guidance. Subsections (8) to (10) sets out the procedures for giving such guidance which requires to be laid before Parliament.

63. Subsection (11) requires the periodic review and/or modifications of a plan, and subsection (12) applies the same procedures to modifications of a plan as apply to its initial drafting.

Section 18: Core paths plan: further procedure

64. Subsection (1) requires a local authority to publicise their plan and any maps, and to make them available for public inspection for at least 12 weeks. In addition, the local authority must consult the local access forums, persons representative of those living and working on the land affected by the plan, SNH and anyone else it thinks fit to enable objections and representations.
65. Under subsection (2), where there are no unresolved objections, the local authority is required to adopt the plan. Where an objection is not withdrawn, subsection (3) provides that the local authority shall not adopt the plan unless directed to do so by Ministers.

66. Subsection (4) requires that Ministers to hold a local inquiry where an objection remains not withdrawn and clarifies that the scope of such an inquiry is restricted to consideration of whether the plan meets the requirement in section 17(1) of providing reasonable public access. Subsection (5) provides a general power for Ministers to hold a local inquiry in any other case.

67. Subsection (6) provides that the procedures for local inquiries in the Town and Country Planning (Scotland) Act 1997 will apply to any inquiry held under this section.

68. Subsection (7) allows Ministers, following publication of the report of the local inquiry, to direct the local authority to adopt the plan as originally drawn up, or in a modified form.

69. Subsection (8) requires a local authority on adopting the plan, to give public notice of its confirmation and to compile a list of core paths. The list, plan and maps to which it refers are to be made available for public inspection; copies are to be made available for sale at reasonable price, and copies are to be provided to Ministers.

70. Subsection (9) requires that the list of core paths must indicate the extent of the public rights in each core path listed e.g. whether the core path is available only for pedestrian use or for wider use. Where Ministers decline to direct the local authority to adopt the plan, subsection (10) requires the local authority to draw up a revised plan. Provision is made to allow Ministers to specify the procedure and time limits for preparing and confirming revised plans (subsections (10) and (11)).

**Section 19: Duty of local authority to uphold public rights in certain core paths**

71. This section applies the general duty on local authorities to uphold access rights under section 13 to core paths.

**Section 20: Delineation by agreement of paths in land over which access rights are exercisable**

72. This section allows local authorities to delineate paths over access land by agreement. Subsection (1) makes provision for a local authority to enter into an agreement (a “path agreement”) for the delineation, creation and maintenance of a path over land in respect of which access rights are exercisable. Subsection (2) allows for an agreement to be made on any terms and conditions, including provision as to payment.

73. Subsections (3) and (4) require that any agreement should include sufficient detail of the land covered by it to enable it to be recorded in the Register of Sasines or entered in the Land Register of Scotland, and places a duty on a local authority to secure its recording or registration as the case may be.
**Section 21: Compulsory powers to delineate paths in land over which access rights are exercisable**

74. This section gives a local authority the power to delineate a path by order. Subsection (1) provides for the making of a path order where considered necessary by a local authority. Subsection (2) provides that a path order can be made only where the local authority considers that it is impracticable to delineate a path by agreement.

75. Where a path order is made, subsection (3) places a duty on a local authority to create and/or maintain it. Subsection (4) allows local authorities to revoke any path order. Subsection (5) provides that the form of a path order can be prescribed, but requires in any case that it contain a map showing the delineation of the path.

76. Subsection (6) permits the local authority to enter land for the purpose of this section. Subsection (7) applies the provisions of this section to paths created under the Countryside (Scotland) Act 1967 which are over land to which access rights subsequently apply. Subsection (8) subjects the making of a path order to the procedures set out in schedule 1.

77. Subsection (9) amends the definition of “overriding interest” in section 28 of the Land Registration (Scotland) Act 1979 to include reference to the exercise of access rights by way of a path delineated in a path order under section 21 of the Bill. Section 6(4) of the 1979 Act requires the Keeper of the Registers of Scotland to record any overriding interest that appears to affect an interest in land.

**Section 22: Ploughing of paths**

78. Subsection (1) allows an owner to plough land incorporating a path delineated by way of a path order under section 21. However, where this is done, subsection (2) places a duty on the owner to notify the relevant local authority within 7 days after the ploughing and, within 8 weeks, the owner must reinstate the path.

79. Subsection (3) provides that an owner who does not notify the local authority or who fails to reinstate the path within the required period shall be guilty of an offence and liable on summary conviction to the fines specified in subsection (3) (a) or (b), respectively.

80. If a landowner fails to reinstate a path within the period set, subsection (4) allows the local authority, after giving the landowner 14 days notice of its intention, to take any steps necessary to reinstate the path, and to recover its reasonable expenses from the landowner.

**Section 23: Rangers**

81. Subsection (1) gives local authorities the power to appoint rangers in relation to any land in respect of which access rights are exercisable. Subsection (2) defines the purposes for which rangers may be appointed.

82. Subsection (3) allows rangers to enter any land in respect of which access rights are exercisable to carry out their functions.
Section 24: Local access forums

83. This section provides for the establishment of at least one local access forum by each local authority.

84. Subsection (1) places a duty on a local authority to establish a local access forum for its area. Subsection (2) sets out the functions of a forum. Subsection (3) provides for the appointment of the members of local access forums by local authorities.

85. In appointing members, subsection (4) requires local authorities to ensure a reasonable balance between land owning and recreational interests.

86. Subsection (5) allows a local authority to appoint one or more of its own members to a forum, and subsection (6) allows a local authority to establish more than one forum for its area.

87. Subsection (7) enables local authorities to pay expenses and allowances to the local access forum.

Section 25: Judicial determination of existence and extent of access rights

88. Subsection (1) enables a summary application to the sheriff to enable a judicial determination of the matters referred to in that subsection. Subsections (2) to (7) set out the procedures which govern such proceedings as supplemented by any Rules of Court. Subsection (8) makes clear that this provision is without prejudice to any other judicial remedy which may be available in respect of rights and duties under this Part of the Bill.

Section 26: SNH: Powers to protect natural heritage

89. This section provides a power to SNH to take steps appropriate to protect the natural heritage, as defined in subsection (3), in relation to land in respect of which access rights are exercisable. Such steps include the putting up and maintenance of notices. Subsection (2) enables SNH to take measures to warn the public about the natural heritage which SNH has taken steps to protect.

Section 27: Existing byelaws providing for public access to land

90. This section requires that all byelaws relating to public access to land must be reviewed within 2 years of the coming into force of this section and, if necessary, modified to ensure consistency with the provisions of Part 1 of the Bill.

Section 28: Application of section 15 to rights of way

91. This section provides that the provisions in section 15 of this Act allowing local authorities to take steps necessary for the safety, protection, guidance and assistance of those exercising access rights also apply in respect of rights of way.
PART 2: THE COMMUNITY RIGHT TO BUY

92. Part 2 confers on rural communities a right to buy land with which they have a connection. The right will arise in relation to land in which they have registered an interest, when that land comes to be marketed or sold. It does so by defining, in section 30, the land which can be bought, and in section 31 sets out details of the kind of community body which has to be established. The registration of interests, which have to be approved by Ministers in accordance with criteria set out in section 35, is covered by section 34. Section 36 provides a procedure for late applications, and subsequent sections explain the effects of registration on landowners and the community body. Part 2 also covers the activation of the right to buy, and sets out the procedure after activation, including ballots (section 48) and the procedure for buying (section 52). The remaining sections cover valuation of the land, appeals, and general and miscellaneous provisions.

Section 30: Registrable land

93. This section describes the land over which a community body may register an interest. Subsections (1) to (3) define registrable land (i.e. rural land) as any land other than excluded land, and provide for an order by which the Scottish Ministers determine excluded land. An order under this section must be made by means of an affirmative statutory instrument and be approved by the Scottish Parliament. Subsections (4) and (5) set out the mapping requirements regarding excluded land.

94. Subsection (6) provides that registrable land includes salmon fishings and mineral rights which relate to land regardless of whether such fishings and rights are held on a separate title (either by the owner of the land to which they relate or by another person). Subsection (7) defines which minerals are excluded from subsection (6)

Section 31: Community bodies

95. Subsection (1) defines a community body as a company limited by guarantee and lists the requirements which must be included in its memorandum and articles of association. Subsection (2) gives Ministers discretion over the minimum number of members a community body must have. Subsection (3) defines a “company limited by guarantee” and “sustainable development”, while Subsection (4) defines a community and its members, and allows Ministers to direct that a different definition may apply.

Section 32: Provisions supplementary to section 31

96. Subsection (1) prohibits any community body, which has either registered an interest in land, or acquired land under the Bill, from amending its memorandum or articles of association without Ministers’ written consent.

97. Subsection (2) allows Ministers to instruct that an entry is deleted from the Register where a community body no longer satisfies the required criteria. Subsection (3) allows Ministers compulsorily to acquire land which was acquired under this Part, where a community body is no longer entitled to retain that land. Such acquisition will, by virtue of the amendment made to the
Section 33: Register of Community Interests in Land

98. Section 33 requires the Keeper of the Registers of Scotland, or such other person as may be designated by Ministers, to set up and maintain a Register of Community Interests, containing details of land subject to a registered interest. It also sets out what information the Register should contain and provides for public access thereto.

99. Subsection (2) sets out in detail the information and documents which the Register shall contain. It also specifies that the Register shall be maintained in such a manner as to be suitable for public inspection.

100. Subsection (3) allows the community body to request that documents relating to its interest in land such as fundraising proposals, which fall within the definition in subsection (4), should not be made public, nor entered in the Register. Subsection (5) makes clear that there is no compulsion on the community body to supply Ministers with any such documentation.

101. Subsection (6) gives Ministers power to modify, by order, provisions contained in subsections (2), (3) and (4). Subsection (7) sets out requirements for public access and retrieval of information from the Register. Subsection (8) provides that a certified extract from the Register carries the same weight of evidence as an original.

Section 34: Registration of interest in land

102. Section 34 sets out the process for registering an interest in land and explains the duties of the community body, Ministers and the owner of the land.

103. Subsection (1) states that the form and contents of applications to Ministers shall be specified in an order. Subsection (2) requires a community body applying to register an interest in land to send a copy of its application to the land owner, and subsection (3) tells a land owner how to proceed where a creditor in a standard security has the right to sell the land.

104. Subsections (4) and (5) set out the procedure to be followed where the owner of the land is unknown or cannot be found.

105. Subsections (6) to (13) set out the process for a community body applying to register an interest in land.

106. Subsection (14) allows for more than one community interest to be registered in the same area of land. Subsections (15) to (17) allow a community body to register interests in more than one holding of land.

107. Subsections (18) to (20) set out the timescale and the procedure for Ministers to notify the community body and the owner of the land of their decision whether or not to register the
community interest and the content of that decision.

Section 35: Criteria for registration

108. This section sets out matters on which Ministers must be satisfied before approving the registration of a community interest.

109. Subsection (1) sets out the specific issues on which Ministers must be satisfied. Subsection (2) requires Ministers to be satisfied as to community approval when the specified level of support is reached and allows for Ministerial discretion in circumstances where the level of support is less than that specified.

Section 36: Procedure for late applications

110. This section allows a community body to apply to Ministers to register a community interest late, i.e. after the land owner has taken action to market his land or after the land owner has notified another community body, which has a registered interest, that he or she intends to market the land.

111. Subsections (1) and (2) explain which applications are covered by this section and specifies the procedure for late applications. Subsection (3) sets out the additional requirements and level of support to be demonstrated before Ministers may approve a late registration.

112. Subsection (4)(a) provides that, where registration follows a late application, the right to buy arises on, and may be exercised from, the date of registration. Subsection (4)(b) provides that there is no requirement for Ministers to seek confirmation from the community body that it intends to exercise a right to buy which has so arisen. Subsection (4)(c) provides that confirmation is deemed to have been given by the community body for the purposes of section 51(2) and (4), section 52(3), section 55(1) and section 62(1)(a).

113. Subsection (5) provides that, if the application is received after the date of conclusion of missives or conferral of an option to acquire the land, Ministers must decline that application.

Section 37: Effect of registration

114. Section 37 prohibits an owner from transferring land which is subject to a registered interest (or any land which forms part of such land) other than in accordance with this Part of the Bill. Owners are also prohibited from taking any action with a view to transferring land which is subject to a community interest.

115. Subsection (2) makes clear that a transfer in breach of this legislation shall not constitute a legally valid transfer of title to the land. Subsection (4) lists the types of exempt transfer which would not give rise to a community right to buy.

116. Subsection (5) defines what constitutes an “action taken with a view to a transfer of land” for the purposes of the Bill.
117. Subsection (6) amends section 25 of the Conveyancing and Feudal Reform (Scotland) Act 1970 (c.35) to the effect that a creditor’s power of sale can only be exercised subject to the provisions of section 34(7)(c) or (8)(c) or section 37(1) of the Bill.

**Section 38: Provisions supplementary to and explanatory of section 37**

118. This section provides further definitions of who or what constitutes family members, trusts and groups of companies for the purpose of this Part of the Bill.

**Section 39: Power to modify sections 37(4) and (5) and 38**

119. This section allows Ministers to amend by order the provisions of section 37 and 38, which define what constitute transfers of registered land.

**Section 40: Anti-avoidance provisions**

120. This section explains that owners of land are prevented from using the exemptions for certain types of transfer to avoid the exercise of the right to buy and states the form of a declaration which is required to be included in a deed transferring land when an exemption is claimed.

**Section 41: Duration and renewal of registration**

121. This section states that a community interest, once registered, shall endure for 5 years from the date of that registration. Community bodies may apply to Ministers to re-register their interest at any time during the last 6 months of the 5-year period. Ministers will have regard to the criteria specified in section 35 when considering an application for re-registration.

**Section 42: Deletion of community interest in land**

122. This section allows Ministers to delete an entry from the Register of Community Interests where, if the application were to be made again, it would be unsuccessful. Ministers are required to seek the views of both the landowner and the community body before deleting the entry.

**Section 43: Activation of right to buy**

123. This section provides for the community right to buy land to proceed once the owner, or a creditor in a standard security with the right to sell the registered land, gives notice of a proposed transfer of that land. An owner is deemed to have given such notice where Ministers have given notice in terms of section 46(3).

**Section 44: Duties on owner, or creditor, proposing to transfer land**

124. Under section 44, where an owner of land, or a creditor in a standard security with a right to sell the land, intends to transfer land, he is required to inform any community body with a registered interest in that land and Ministers in the manner to be prescribed by regulations.
Section 45: Procedure following receipt of notice under section 44

125. Section 45 sets out the procedure to be followed once the land owner gives notice that he intends to transfer registered land. Ministers shall have the notice entered on the Register and will inform the land owner and at the same time require the community body to confirm whether or not it will exercise its right to buy. Under subsection (4) the community body has up to 30 days to respond to Ministers; failure to do so means that the right to buy falls.

Section 46: Power to activate right to buy land where breach of this Part

126. This section allows Ministers to confer a right to buy registered land on a community body following a successful application by that community body to the Lands Tribunal for Scotland (“the Lands Tribunal”). Ministers must first have received notice from the Lands Tribunal stating that registered land had been transferred in breach of this Part of the Bill.

127. Subsection (2) sets out the conditions which must apply before the right to buy may be conferred under this section. These include that the transfer in breach occurred in the previous 10 years, that the land has remained registrable land during that time, and that the original interest which existed at the time of the breach, or a new interest, has been registered in that land.

Section 47: Exercise of right to buy: approval of community and consent of Ministers

128. Section 47 sets out the conditions for approval by the community (as defined in section 31(4)) of the right to buy and for Ministers’ consent; both are required before the community body may exercise the right to buy.

129. Subsection (2) specifies the level of support which a community must demonstrate in the ballot; at least half of the eligible members of the community must vote in the ballot (or where less than half vote a sufficient member to justify the community purchase). A majority of those voting must vote in favour.

130. Subsection (3) states the conditions that must be met before Ministers’ give their consent, and subsection (4) defines sustainable use and development of land.

131. Subsection (5) allows community bodies to require Ministers to treat information regarding the proposed use of land, or financial arrangements provided to them as confidential.

132. Subsection (6) requires Ministers to write to the community body and the owner of the land with their decision on whether to give consent to the right to buy, setting out their reasons, and to have this decision recorded in the Register.

Section 48: Ballot procedure

133. Section 48 regulates the conduct of the ballot to determine the level of community support for the acquisition of land. The ballot is to be conducted fairly and reasonably. Ministers will determine whether or not the ballot has met with this requirement. If the ballot is not conducted in such a manner, the right to buy falls.
134. Under subsection (3), Ministers may decide that failure to comply with the information requirements in subsections (5) and (6) will not necessarily make the ballot invalid.

135. Subsection (7) specifies a 28 day period for notification of the ballot results and the relevant commencement dates for that period.

**Section 49: Provisions supplementary to section 47: salmon fishings and minerals**

136. This section states that the community body, in exercising its right to buy salmon fishings or mineral rights, must already own, or at the same time be exercising its right to buy, the land to which these rights relate. In addition, Ministers shall not consent to the right to buy unless they are satisfied as to the matters specified under section 47(3) and section 49(a) and (b).

**Section 50: Declinature or extinction of right to buy**

137. This section allows a community body with a registered interest to decline the right to buy registered land at any time. This should be done by written notice to Ministers. The community interest will then be deleted from the Register.

138. Under subsection (3), if the right to buy has been triggered by the owner of land having taken action to sell the registered land, then the right to buy is also extinguished. Subsection (4) permits a community body to register their interest again in the same land at a later date.

139. Subsection (5) allows a land owner to withdraw from the sale at any time prior to the conclusion of missives, providing written notice is given. Subsections (6) to (8) outline the effects of this notice.

**Section 51: Right to buy same land exercisable by only one community body**

140. This section provides for only one community body to exercise the right to buy where two or more community bodies have registered an interest in the same area of land. Ministers shall decide, under subsection (2), which community body should be allowed to exercise the right to buy, whereupon the other community body’s right to buy falls and its interest is deleted from the Register. This procedure also applies where a community body and crofting community body seek the right to buy the same land.

**Section 52: Procedure for buying**

141. This section states that it is for the community body to make an offer to buy the land over which it has a right to buy. The price specified in the offer shall be determined by the appointed valuer, failing which by appeal. The offer should also specify the date of entry.

142. Subsection (3) specifies how the date of entry and payment of the price are determined. A time limit of 6 months is set for the community body to pay the determined price. However, where the price is subject to an appeal which has not been agreed within 4 months, payment must be made within a further 2 months of the date of determination of the appeal, unless a later date has been agreed between the parties.
143. Under subsection (4), the offer may include other conditions, for example, relating to the maintenance of common property. Subsection (5) provides that where the community body has failed to conclude missives, or carry out certain actions then the right to buy falls. Subsection (6) lists the actions the community body must take if the right to buy is not to be extinguished by Ministers.

Section 53: Powers of Lands Tribunal in event of failure or delay

144. This section allows the Lands Tribunal to take action where the transfer of title has been delayed, either by the landowner or the community body, by ordering the party responsible for the delay to take remedial action within a specified time or to advise Ministers that they no longer wish to proceed.

145. Under subsections (2) and (3), if the community body fails to comply with such an order its right to buy the land may be extinguished by virtue of a further order from the Lands Tribunal, and the registered interest removed from the Register.

146. Under subsection (4) if the landowner fails to comply with such an order then the landowner may, by virtue of a further order from the Lands Tribunal, be compelled to transfer the land to the community body.

147. Where the order is made against the owner of the land under subsection (1) then, under subsection (5), the order may be enforced by the Court.

Section 54: Procedure where right to buy activated under section 46(3)

148. Section 54 applies where a right to buy is activated by reason of Ministers giving notice, following a Lands Tribunal determination that the owner has transferred, or taken steps to transfer, the land in breach of this Part of the Bill. This section sets out the procedure for buying land where a right to buy is so activated and disapplies the procedures set out in the preceding two sections.

149. Subsections (2) to (6) outline the procedure for buying in place of the procedure under sections 52 and 53. It is for the community body to ensure that any necessary transfer documents are prepared, and that land being transferred is the same as that approved by Ministers as being subject to the right to buy.

150. Subsection (3) states that the price is set by an appointed valuer and is subject to appeal. Subsection (4) requires the owner of the land to provide the necessary documents and to transfer the land in question.

151. Where the owner of the land fails to co-operate, or where documents cannot be found, subsection (5) provides for the Lands Tribunal, at the request of the community body, to order the owner or such person as may hold the documents to produce them. Subsection (6) provides that if the owner of the land fails to convey the land then the community body may apply to the Lands Tribunal for an order allowing its principal clerk to execute the conveyance and other documents.
Section 55: Assessment of value of land

152. This section covers the appointment of a valuer, and the valuation of the land to be transferred under this Part of the Bill. Subsection (1) provides that Ministers are required to appoint a valuer within 7 days of the community body confirming that it wishes to exercise the right to buy. Subsection (2) provides that failure to comply with this time limit does not invalidate the community body’s right to buy.

153. Subsection (3) provides that the valuer will act independently of the two parties. Subsection (4) states that the land is to be valued at market value at the date on which the owner notified Ministers of his or her intention to sell the land. In the case of a late application, valuation will be based on the date Ministers received the community body’s application. Subsection (5) requires that any salmon fishings or mineral rights shall be valued separately from the land.

154. Subsection (6) defines market value. Subsection (7) requires the valuer to take account of any person (other than the community body) willing to pay a higher price for the land than others because of a particular characteristic of the land but only insofar as any market sale would do so. It also requires him to take account of any diminution in value where the community body is only buying part of the land which is for sale. It also lists factors which should have no bearing on the valuation.

155. Subsections (8) and (9) provide that, where any moveable property is being sold with the land, such moveable property should be included in the valuation. However, any such items should be valued individually.

Section 56: Procedure for valuation

156. Subsection (1) requires the valuer to consider any written representations from the landowner and the community body relating to the value of the land. Subsections (2) and (3) require the appointed valuer to notify Ministers, the landowner and the community body of the valuation within 6 weeks of the valuer’s appointment, or a within such longer period as determined by Ministers.

Section 57: Appeals

157. This section provides that landowners, community bodies and other interested parties may appeal against certain decisions by the Scottish Ministers by means of summary application to the sheriff. The sheriff’s decision will be final.

158. Subsection (1) states that a landowner may appeal against Ministers’ decision to approve a community body’s application for registration, or to allow the community body the right to buy.

159. Subsection (2) enables a community body to appeal against Ministers’ decision not to approve a community body’s application for registration, or not to allow the exercise of the right to buy.
160. Under subsection (3), any person who is a member of the local community (as defined), or any person who has a legal right relating to the land may appeal against Ministers’ decisions to enter an interest in the Register or to allow the exercise of the right to buy.

161. Subsection (4) sets a limit of 28 days for lodging appeals. Subsection (5) provides which sheriff has jurisdiction to hear appeals.

162. Subsection (6) makes clear that where an owner appeals, he or she shall inform both the community body and Ministers; where a community body appeals, it shall inform the landowner and Ministers; and where a member of the local community appeals, he or she shall inform the community body, the landowner and Ministers.

163. Subsection (7) makes clear that a decision by a sheriff may result in the need to amend the Register and may result in conditions being imposed on those appealing.

Section 58: Appeals to Lands Tribunal: valuation

164. This section provides that the landowner and the community body may appeal against the valuation to the Lands Tribunal. Such an appeal must state the grounds on which it is being made and must be lodged within 21 days of notification of the valuation.

165. Subsection (3) allows the Lands Tribunal to reassess the valuation. Subsection (4) permits the valuer who made the valuation to act as a witness in the appeal. Subsection (5) provides for a time limit by which the Lands Tribunal is to commence the appeal hearing.

166. Subsection (7) requires the Tribunal to give reasons for its decision in writing within two weeks of hearing the appeal. However, under subsection (8), the validity of the community right to buy is not affected by any failure by the Lands Tribunal to comply with this time limit.

167. Subsection (9) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer, and subsection (10) allows Ministers to utilise the provisions of the Lands Tribunal Act 1949 to make new rules as required to enable the Lands Tribunal to deal with appeals under this section.

Section 59: Compensation

168. This section deals with the provision of compensation for any person, except the community body, who has suffered loss or expense arising from this Part of the Bill.

169. Subsection (1) sets out the circumstances in which compensation will apply, and confirms that Ministers will meet the costs of any successful compensation claim.

170. Subsection (2) states that a person’s entitlement to compensation is limited to the loss or expense which would not have been incurred in a sale of land had the date of entry been other than that specified in terms of the Bill.
171. Subsection (3) limits the payment of compensation to the period of operation of the community right to buy, which period expires 6 months from the date the community body confirmed exercise of its right to buy, or in the case of a late application 7 months from the date when that application was received by Ministers. In the event that the valuation is appealed the period is extended to 2 months after the determination or settlement of the appeal.

172. Under subsection (4), any person who has incurred loss or expense due to their right of pre-emption, redemption or reversion having been suspended or extinguished shall be entitled to compensation from Ministers. Subsection (5) provides for the procedure for assessing loss and for calculating and recovering compensation to be prescribed by order.

Section 60: Compensation appeals

173. This section provides for an appeal to the Lands Tribunal against Ministers’ decisions on compensation, and permits the Lands Tribunal, following such an appeal, to substitute its own award for that of Ministers.

Section 61: Right to acquire sporting interests

174. Under this section, where land acquired under the community right to buy is subject to a sporting lease and the tenant under the sporting lease seeks to assign the remaining period of the lease, the community body may acquire the tenant’s interest for that period.

175. However, under subsection (2), the community body is not entitled to acquire the tenant’s interest where the land which is subject to the sporting lease is not wholly owned by the community body.

Section 62: Effect of right to buy on other rights

176. This section deals with the effect that the community right to buy has on other rights over registered land.

177. Subsection (1) states the effect of the community right to buy in relation to pre-existing rights of pre-emption, redemption, or reversion. These rights shall be suspended at the point where a community body confirms that it wishes to exercise its right to buy, and extinguished if and when the transfer under the community right to buy has been completed. However, these rights will be revived if the transfer is not completed.

178. Subsection (2) identifies specific statutory and related rights, which are suspended during the right to buy process, but are revived in the same way as the rights described in subsection (1). These rights are also revived if the transfer is completed. Subsection (3) makes clear that nothing in this Part of the Bill affects existing inhibitions, adjudications, or any other diligence.

Section 63: Amendment to the Land Registration (Scotland) Act 1979

179. This section amends the Land Registration (Scotland) Act 1979 to require the Keeper to notify Scottish Ministers in the event that he has rejected an application for registration on the
These documents relate to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 27 November 2001

Land Register on the ground that he believes it relates to a transfer which is prohibited by the Bill.

Section 64: Construction of references to land in which community interest registered

180. This section explains that a registered community interest under this Part will affect any land being transferred even if only part of the registered community interest is included in the land being transferred, but does not give the community body a right to buy only part of the registered land which is offered for sale.

PART 3: THE CROFTING COMMUNITY RIGHT TO BUY

181. Part 3 of the Bill gives crofting communities a right to buy certain land which is held under crofting tenure and to allow them in certain circumstances to buy certain other contiguous land at the same time. It defines the land that can be bought, who can buy it and how it is to be acquired. It sets out the procedures to be followed in determining what the community might be permitted to acquire and whether they are to be allowed to acquire it. It also provides mechanisms for determining how the consideration to be paid is to be assessed and sets out procedures to facilitate the transfer of the property. It includes procedures for judicial consideration of important issues and processes which provide for appeals against ministerial decisions and valuations to be considered in appropriate courts. It also provides that the rights it gives crofting communities will not affect the operation of the Crofters (Scotland) Act 1993 in relation to the land over which the right to buy is exercised, nor does it prevent a crofting community body from buying or owning any other land.

Section 65: Land which may be bought: eligible croft land

182. This section defines the land which may be bought.

183. Subsection (2) defines the land and interests in land which are to be classed as eligible croft land. It is intended to apply to all land which is subject to crofting tenure and regulation. This includes crofts even if unlet and common grazings even if apportioned. It encompasses salmon fishings in inland waters within or contiguous to eligible croft land, as defined in subsection (2)(a) to (c), regardless of whether such fishings are owned separately from the land (i.e. fishings may be held on a separate title, either by the owner of the land to which they relate or by another person). The definition also includes mineral rights on or under eligible croft land, as defined in subsection (2)(a) to (c), including any such mineral rights which are owned separately from the land.

184. Subsection (3) provides that land will not be eligible croft land if it is a croft occupied or worked by the owner of the croft or a member of that owner’s family and “occupation of a croft” is defined in subsection (4).

Section 66: Land which may be bought: salmon fishings and mineral rights

185. This section places limitations on the timing of purchases of eligible croft land which consists of salmon fishing rights or mineral rights.
186. Subsection (1) provides that a crofting community body may apply to buy eligible croft land which consists of mineral rights or salmon fishings either when it is buying the eligible croft land under which the relevant mineral rights lie or from which the relevant salmon fishings can be exercised or during a relevant period following a successful application to purchase that eligible croft land. Subsection (2) provides that a purchase during the relevant period will only be possible if the crofting community body has either confirmed its intention to complete the purchase of the eligible croft land in accordance with this legislation or has already used the provisions of this Bill to purchase that land and continues to own it.

187. Subsection (3) defines relevant period for the purposes of subsection (1) as a period running from the date on which Ministers agreed to the right to buy application for the purchase of the land to which the mineral rights or salmon fishings relate. If the purchase of the croft land does not proceed the relevant period ends on the date on which the crofting community body indicates that it does not intend to proceed. In all other circumstances, the period expires in the case of salmon fishings one year after the purchase of the eligible croft land is completed and in the case of mineral rights 5 years after that date.

Section 67: Land which may be bought in addition to eligible croft land

188. This section defines eligible additional land and eligible sporting interests which may be bought through the exercise of the crofting community right to buy and sets the period during which such sporting interests may be purchased.

189. Subsection (3) imposes a time limit on the period during which the crofting community body may apply to purchase sporting interests and provides that such interests may only be acquired if the crofting community body retains ownership of the relevant eligible croft land. The time limit is specified as running from the date on which Ministers consented to the purchase of the eligible croft land until five years after the date on which the purchase was completed. This subsection also excludes the use of this right to buy to acquire sporting interests leased back to the former owner under the provisions of section 80.

190. Subsection (4) defines eligible additional land as land which is contiguous to eligible croft land and owned by the same person. It also makes clear that salmon fishings and mineral rights associated with eligible additional land are not eligible additional land. This means that salmon fishings and mineral rights cannot be purchased as eligible additional land. Also the subsection defines “eligible sporting interests” as being the rights of a person other than the owner of eligible croft land under any lease or other contract to shoot or fish on that land.

191. Subsection (5) provides that eligible sporting interests excludes a lease of salmon fishings thus ensuring that existing formal management arrangements for salmon fishings need not be disturbed by a change of ownership.

Section 68: Crofting community bodies

192. This section sets out the criteria which a body must meet to be considered to be crofting community body for the purposes of the Bill and provides definitions relevant to these criteria.
193. Subsection (3) defines a crofting community but allows for modification of that definition by Ministers, and subsection (4) explains the meaning of the term “crofting township” as used in the definition of crofting community in subsection (3).

Section 69: Provisions supplementary to section 68

194. This section specifies the constraints which apply to a crofting community body after it has acquired land under the legislation, the sanction for non-compliance and the basis on which that sanction will be applied.

195. Subsection (1) prohibits any crofting community body, which has acquired land under the Bill and continues to own that land, from amending its memorandum or articles of association except with the consent of Ministers.

196. Subsection (2) allows Ministers to acquire land from a crofting community body, by means of compulsory purchase, where that body purchased land under the Bill and it no longer meets the criteria which would qualify it to exercise a crofting community right to buy that land. Such acquisition will, by virtue of the amendment made to the Acquisition of Land (Authorisation of Procedure) (Scotland) Act 1947 (c.42) by paragraph 16 of schedule 2 to the Bill, be carried out in accordance with the procedures set out in that Act.

Section 70: Application by crofting community body for consent to buy croft land

197. This section deals with the process of applying to exercise the crofting community right to buy. It specifies that only a crofting community body may exercise the right to buy, that an application to do so must be in writing and that the exercise of that right requires the consent of Ministers.

198. Subsection (3) provides that there must be a separate right to buy application in respect of each holding of land (including holdings consisting solely of salmon fishings or mineral rights) or of a sporting interest which the crofting community body is seeking to purchase and also provides that each application must be considered and determined by Ministers on its own merits. Subsection (4) provides that a holding of land or of a sporting interest includes a holding in common or joint ownership.

199. Subsection (5) provides that an application must be made in the prescribed form and sets out certain information which must be given in or accompany the application. In this context prescribed means that the form of the application must be specified in regulations made by the Scottish Ministers and which can be annulled by a resolution of the Scottish Parliament.

200. Subsection (6) defines “sustainable use or development” for the purposes of subsection (5)(g).

201. Subsection (7) specifies that at the same time as the crofting community body applies to Ministers, it shall send a copy of the application form and associated material to the owner of the land or relevant interest in land.
202. Subsections (8) to (12) specify what Ministers must do on receipt of the application. Subsection (13) provides that Ministers may decline to consider an application if it is incomplete, not in the proper form, includes land or an interest in land which is not within the definitions of sections 65 and 67, or is an application which Ministers would be bound to reject e.g. because it is otherwise incompetent.

Section 71: Criteria for consent by Ministers

203. This section provides that Ministers must satisfy themselves about specified matters before consenting to a crofting community right to buy.

204. Subsection (1) sets out a list of requirements which Ministers must establish have been met before their consent to a crofting community right to buy is given. Subsection (1)(c) is linked to section 74 which has effect if the application includes eligible additional land which is not included at the request of or with the consent of the landowner. There is also a connection with section 76, which deals with the situation where a landowner has requested the inclusion of eligible additional land in the application.

205. Subsection (1)(g) prevents the crofting community right to buy being used to re-purchase land which has previously been acquired through the use of that right to buy then re-sold.

206. Subsection (1)(h) prevents the exercise of the crofting community right to buy where the owner of the land is prevented from selling or is under an obligation to sell to someone other than the community body.

207. Subsection (1)(i) requires Ministers to be satisfied that a community body meets the requirements in section 68.

208. Subsection (1)(j) requires Ministers to satisfy themselves that the exercise of the right to buy would be compatible with the sustainable development of the crofting community.

209. Subsection (1)(k) imposes a similar requirement to be satisfied that the exercise of the right to buy would be compatible with the sustainable development of the land or interest in land which would be acquired if the application is successful.

210. Subsection (1)(l) ensures that acquisitions of salmon fishings, mineral rights and sporting interests must be capable of contributing to the sustainable development of the community.

211. Subsection (1)(m) enables Ministers to ensure that the crofting community body and the crofting community to which it relates fully represent the crofting interests in the land which is the subject of the application.

212. Subsection (1)(n) requires Ministers to be satisfied that a ballot has taken place and the relevant crofting community have approved the crofting community right to buy application. This links to section 72.
213. Subsection (1)(o) requires Ministers to be satisfied that the exercise of the right to buy would be in the public interest before consenting to the application.

214. Subsection (2) expands the meaning of public interest for the purposes of the requirement in subsection (1)(o), and in particular provides that the interests of any community defined for the purposes of section 31(1)(a) or any crofting community defined for the purpose of section 68(1)(a) of the Bill must be taken into account.

**Section 72: Ballot to indicate approval for purposes of section 71(1)(n)**

215. This section sets out the arrangements for a ballot to establish that a crofting community right to buy application by a crofting community body has the support of the crofting community which that body represents.

216. Subsection (1) provides that a proposal by a crofting community body to exercise a crofting community right to buy will be deemed to have been approved by the relevant crofting community if, firstly, the vote takes place within the six month period immediately preceding the date of the right to buy application; secondly, that a majority of those voting in that ballot supported the proposal to make the application; and thirdly, that the majority of the croft tenants of the land to which the application applies who voted in that ballot also voted in favour of making the application.

217. Subsections (2) and (3) specify requirements as to the conduct of the ballot and subsection (5) specifies that if there is not a properly conducted ballot then the crofting community right to buy application falls.

218. Subsection (4) provides that Ministers may decide that a failure to meet all of the procedural requirements set out in subsections (6) and (7) has not prevented the ballot from being conducted fairly and reasonably.

219. Subsection (6) requires that the conduct of the ballot and arrangements for publishing the results will be prescribed by regulations to be made by the Scottish Ministers and which can be annulled by a resolution of the Scottish Parliament. Subsection (7) sets out the requirements for reporting the results of the ballot to Ministers.

**Section 73: Right to buy same eligible land exercisable by only one crofting community body**

220. This section deals with the situation where there is more than one crofting community body interested in buying the same land (e.g. where two or more crofting townships share a common grazing). It provides that only one crofting community body may exercise the right to buy that land and states that where two or more such bodies seek to buy the same land Ministers will decide which one shall be allowed to proceed. It also provides that once a decision is made in favour of a particular crofting community body, any other crofting community body’s right to buy, so far as it relates to that application, shall be extinguished.
Section 74: Reference to Land Court of purchase of eligible additional land without owners consent

221. This section deals with cases in which the crofting community body applies to include eligible additional land in the transfer and the owner of the land does not agree that such land should be included.

222. In cases where the requirements in section 71(1)(c) regarding owners consent are not met subsection (1) allows Ministers to refer the question, as to whether the application should be consented to without the consent of the owner, to the Scottish Land Court.

223. Subsection (2) specifies who may make representations to the Scottish Land Court in connection with any such referral and subsection (3) provides that the Scottish Land Court may approve the application but only if they have been satisfied that the criteria specified in that subsection have been met. It further provides that the effect of the Scottish Land Court approving the application will be the same as if Ministers had been satisfied that the landowner had consented to the inclusion of this land. The effect of the specified criteria is—

- that the acquisition must be essential to the sustainable development of the crofting community;
- that the purpose for which the purchase of that land is proposed cannot be achieved by other means available to the Scottish Land Court or the crofting community body;
- that the purchase will not be seriously prejudicial to the use and management of other land held by the land owner; and
- that the total amount of additional land that can be purchased can be the greater of either an area of up to 5% of the total area of all land being purchased through the application and land already held by the crofting community body, which was previously acquired through the crofting community right to buy, or an area of up to 10 hectares.

224. Subsection (4) provides that where the Scottish Land Court approves the application it may require Ministers to impose conditions which will apply to the land to be transferred to the crofting community body.

225. Subsection (5) provides that if the purpose for which the crofting community body is seeking to acquire additional land can be met by imposing conditions on all or part of that land rather than by acquiring such land then the Scottish Land Court may make an order which approves the application without the additional land or part of it, providing that when Ministers consent to the application, their consent is given subject to the imposition of such title conditions on transfer of the land. The effect of this is that the crofting community body would not gain ownership of the additional land, but if the crofting community right to buy is effected there would be conditions imposed on land retained by the landowner.

226. Subsection (6) provides that the effect of the Scottish Land Court approving the application in accordance with subsection (5) will be the same as if Ministers had been satisfied that the landowner had consented to the inclusion of this land.
Section 75: Modification of section 74(3)(a) to (d)

227. This section provides that Ministers may vary or add to the range of matters specified in section 74(3) on which the Scottish Land Court must be satisfied before it approves a right to buy application which includes additional land, where the landowner has not consented to its inclusion. It allows Ministers to do this by means of an order approved by the Scottish Parliament.

Section 76: Additional land included at request of owner

228. This section deals with the situation where, in response to a crofting community right to buy application, a landowner requests that the crofting community body should also take other land which that landowner owns in addition to the land in the application.

229. Subsection (1) provides that, where such a request is made timeously, Ministers may, if they consider it is in the public interest, require that the crofting community right to buy application be modified to include such additional land in the area of land to be purchased.

230. Subsection (2) provides that Ministers may refer the question as to whether the additional land should be included to the Scottish Land Court, and shall do so if required either by the landowner who made the request, or by the crofting community body.

231. Subsection (3) requires the Scottish Land Court to report its findings in fact relating to the additional land to Ministers and subsection (4) requires Ministers to take account of these findings in reaching their decision as to whether the land must be included in the application.

Section 77: Consent conditions

232. This section provides that Ministers may apply conditions to their consent to an application to exercise the crofting community right to buy.

Section 78: Reference to Land Court of questions on applications

233. Subsection (1) allows Ministers and other persons specified with an interest in the relevant land to refer any question (other than a question which could have been referred to the Court under sections 74(1) or 76(2)) arising in connection with a crofting community right to buy application to the Scottish Land Court before Ministers decide the application.

234. Subsection (2) provides that in considering any question referred to it under this section the Scottish Land Court may have regard to representations made by the crofting community body, the owner and anyone else who in the opinion of the Scottish Land Court appears to have an interest.

235. Subsection (3) provides that following referral the Scottish Land Court will convey its findings on that question to Ministers and make an order setting out conditions which Ministers must impose if they consent to the crofting community right to buy application.
Section 79: Notification of Ministers’ decision on application

236. Subsection (1) provides that Ministers will give notice in writing of their decision to consent to or refuse an application to exercise the crofting community right to buy, and identifies the persons to whom such notice must be given. It specifies that the notice must be in a prescribed form, and requires Ministers to give reasons for their decision. In this context “prescribed” means that the form of the notice must be specified in regulations made by Ministers which can be annulled by a resolution of the Scottish Parliament. It also specifies the persons to whom such notice must be sent.

237. Subsection (2) provides that regulations made under subsection (1) must require that the notice includes a full description of the land and any title conditions imposed under section 77. Subsection (3) specifies that the notice shall contain information about the consequences of the decision, the rights of appeal and state the date on which the decision is effective.

Section 80: Leaseback to owner of sporting interests

238. This section allows for any sporting rights to be leased back to the person who owned the land prior to the exercise of the right to buy, at a nominal rental for a period of at least 20 years.

239. Subsection (1) specifies that the leaseback provisions apply where the owner of the land had sole use of the sport at the date of the right to buy application, the crofting community body has proposed a leaseback of the sport in their application and the owner has, within the specified 60-day time limit, notified Ministers, in writing, that he or she wishes to lease the sporting interest in the land.

240. Subsection (2) states that on being so notified Ministers will invite the Scottish Land Court to specify appropriate terms and conditions for a leaseback of sport.

241. Subsection (3) requires the Scottish Land Court to determine what these terms and conditions should be and also requires that the mandatory terms and conditions specified in subsection (4) must be applied.

242. Subsection (4) sets out the mandatory terms and conditions and provides that these will not prevent the lease from being recorded or registered in accordance with the provisions of the Registration of Leases (Scotland) Act 1857. It also provides that the lessee under such a lease (initially the former owner of the land) will be entitled to assign his or her interest in that lease.

243. Subsection (5) provides that the crofting community body will be responsible for granting the lease. Subsection (6) allows the crofting community body and the owner to agree their own terms and conditions for a leaseback of the sport if they both wish to do so.

Section 81: Effect on other rights of Ministers’ decision on right to buy

244. Subsection (1) provides that the crofting community right to buy has an effect on pre-existing rights of pre-emption, redemption or reversion or any option to purchase. It provides that these rights shall be suspended if Ministers approve a right to buy and extinguished when
the transfer under the crofting community right to buy has been completed. However, should the transfer not be completed, either because the crofting community body decides not to proceed to buy the land or withdraws its confirmation of its intention to proceed, then it provides that the suspension of rights is lifted and these rights are revived.

245. Subsection (2) identifies statutory rights which are suspended and revived in the same way as the rights described in subsection (1). However, it provides that these rights are also revived once the transfer under the crofting community right to buy has been completed.

246. Subsection (3) provides that nothing in this Part of the Bill prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

Section 82: Confirmation of intention to proceed with purchase and withdrawal

247. Subsection (1) provides that a crofting community body may only exercise its right to buy if within 21 days after Ministers consent to the application it sends notice confirming its intention to proceed to buy the land to Ministers and the owner.

248. Subsection (2) provides that by notice in writing to Ministers the crofting community body may withdraw its right to buy application or its confirmation of its intention to proceed and subsection (3) specifies what Ministers must do on receipt of such notices.

Section 83: Completion of purchase

249. This section deals with conveyancing matters relevant to the transfer of land following Ministers giving consent to a crofting community right to buy application.

250. Subsection (1) provides that the crofting community body will be responsible for preparing the documents necessary to effect the conveyance of the land and for ensuring that the subjects to be conveyed are the same as those specified in the consent given by Ministers. It places an obligation on the crofting community body to ensure that in preparing the documents that they take account of all conditions imposed by Ministers.

251. Subsection (2) provides that where the crofting community body cannot comply with its duty regarding the property to be conveyed due to the fact that part of the land or interests in land covered by the consent to the crofting community right to buy is not owned by the person named as owner in the application, then it shall refer this matter to Ministers.

252. Subsection (3) provides that where such a reference is made then Ministers may direct that the right to buy may be exercised as if that part of the land or interest had never been included in the application or they may direct that the right to buy is extinguished.

253. Subsection (4) requires the owner of the land or interest subject to the crofting community right to buy to make title deeds available to and transfer title to the crofting community body.
254. Subsection (5) provides that if the owner refuses or fails to make these deeds available, or if they cannot be found, the crofting community body can apply to the Scottish Land Court for an order requiring the production of these documents.

255. Subsection (6) provides that the crofting community body may apply to the Scottish Land Court to authorise its principal clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. It further provides that the effect of the principal clerk doing so will be the same as if it were done by the owner.

Section 84: Completion of transfer

256. Subsection (1) provides that the consideration payable for the land or interest over which the crofting community right to buy is exercised shall be the value of that land or interest as assessed under section 85 by the valuer appointed by Ministers. Subsection (2) provides that this consideration should be paid not later than 6 months after the date on which Ministers consented to the right to buy application.

257. Subsection (3) specifies circumstances where either this payment deadline will not apply or where an alternative deadline will apply. In particular it allows the landowner and the crofting community body to agree an alternative payment date and provides for deferral of payment when the valuation has not been completed or has been subject to an appeal.

258. Subsection (4) specifies that where the owner is not able to grant a good and marketable title to the crofting community body by the date for payment, then payment shall be made to and held by the Scottish Land Court pending either completion of the conveyance or notification to the Court by the crofting community body that it has decided not to complete the transaction.

259. Subsection (5) specifies that if the consideration is not paid by the crofting community body by the due date the right to buy application will be deemed to have been withdrawn by the crofting community body. This creates a liability to pay compensation under section 86.

260. Subsection (6) provides that when the crofting community body record or register their title the land or interest acquired shall be disburdened of any heritable security. Where land is disburdened of a heritable security on purchase by a crofting community body subsection (7) requires that the person or persons to whom the consideration for that purchase was paid must pay the creditors under that heritable security whatever sums are due to them.

Section 85: Assessment of value of croft land etc.

261. Subsection (1) requires that Ministers, where they have consented to a crofting community right buy application, must appoint a valuer to assess the value of that land or an interest in land within 7 days of that consent.

262. Subsection (2) provides that the validity of the valuation is not affected if Ministers fail to appoint a valuer in the time specified in subsection (1).
263. Subsection (3) makes clear that in arriving at his or her valuation the valuer is acting for neither the crofting community body nor the landowner.

264. Subsection (4) specifies that the value will be the market value at the date Ministers consented to the application to exercise the right to buy. Subsections (5) and (6) define market value. Subsection (6)(a)(ii) provides that market value may include compensation for any depreciation in value of other land and interests belonging to the seller as a result of the forced sale. Subsection (6)(a)(iii) provides that market value may include compensation for any disturbance to the seller resulting from the forced sale.

265. Subsection (8) requires the valuer to ask both the owner and the crofting community body for their views in writing on the value of land or interests and to take these representations into account in arriving at his or her valuation.

266. Subsection (9) specifies that where the crofting community body and the owner have agreed the valuation they shall notify the valuer in writing of that valuation.

267. Subsection (10) provides for discounting the valuation on account of the value of a leaseback of the sporting interest to the owner.

268. Subsections (11) and (12) require the appointed valuer to notify Ministers, the landowner and the crofting community body of his or her valuation. This must be done within 6 weeks of being appointed or within a longer period set by Ministers.

269. Subsection (13) provides that the validity of the transfer is not affected by a failure by the valuer to comply with the time limit.

Section 86: Compensation

270. This section provides for payment of compensation to anyone who has incurred losses or expenses as a result of an application to exercise the crofting community right to buy. It provides that the compensation will be payable by the crofting community body except where Ministers have refused the application, in which case the compensation will be paid by Ministers.

271. Subsection (1) specifies the circumstances in which eligibility for compensation which can be recovered from the crofting community body, will arise.

272. Subsection (2) provides that the crofting community body will not be liable to pay compensation when a crofting community right to buy application is made but is not approved by Ministers. Subsection (3) specifies that in the circumstances covered by subsection (2) compensation for losses and expenses can be recovered from Ministers.

273. Subsection (4) provides that Ministers shall make an order governing how compensation is claimed and assessed. Subsection (6) specifies such an order may be annulled by a resolution of the Scottish Parliament.
274. Subsection (5) provides that if the parties cannot agree whether compensation is payable or the amount of such compensation within the timescale specified in the order, then either party may refer the matter to the Scottish Land Court.

Section 87: Grants towards crofting community bodies’ liabilities to pay compensation

275. This section provides that Ministers may, in certain limited circumstances, pay a grant to a crofting community body to assist it in meeting the compensation it has to pay in connection with its exercise of the crofting community right to buy.

276. Subsection (2) specifies the circumstances in which payment of such a grant would be permitted. Subsection (3) makes it clear that Ministers are not bound to pay grant even when all the circumstances specified arise.

277. Subsection (4) provides that payment of grant may be subject to conditions including conditions relating to repayment in the event of breach.

278. Subsection (5) provides that grant may be paid only if the crofting community body applies for it. Subsection (6) provides that the form of the application and the application procedure will be specified by Ministers in regulations which may be annulled by a resolution of the Scottish Parliament.

279. Subsection (7) specifies that Ministers shall issue their decision on a grant application in writing and, in the case of refusal, with reasons and subsection (8) provides that their decision is final.

Section 88: Appeals against consent

280. Subsections (1) and (2) provide that the landowner, any person who is a member of the crofting community, any person who has a legal right relating to the land or anyone invited to give views on an application to exercise the crofting community right to buy land or an interest in land may appeal against Ministers decision to consent to the application, by means of a summary application.

281. Subsection (3) specifies that the crofting community body may appeal the refusal of the application. However, subsection (4) makes it clear that this right does not extend to a decision by Ministers under section 73 upon which of two or more applications to buy the same land they should consent to.

282. Subsection (5) restricts appeals under subsections (1) and (3) to those on a point of law and sets a time limit for lodging appeals.

283. Subsections (6), (7) and (8) indicate which sheriff has jurisdiction to hear appeals, how he shall dispose of these and that his decision is final. Subsection (9) provides that where the effect of the order by the sheriff is the same as granting the application the order may be made subject to any condition which Ministers could have imposed, and subsection (10) ensures that such an
These documents relate to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 27 November 2001

order shall be consistent with any decision or findings by the Scottish Land Court.

Section 89: Appeals to Land Court: valuation

284. Subsection (1) provides that the owner of land or of an interest in land over which the crofting community right to buy is being exercised and the crofting community body which is exercising that right to buy may appeal to the Scottish Land Court against the valuation of that land or interest in land.

285. Subsection (5) requires the Scottish Land Court to give its decision on the appeal, in writing with reasons, within 2 weeks of hearing the appeal.

Section 90: Agreement as to matters referred or appealed

286. This provision allows the parties to a crofting community right to buy to reach an out of court settlement on any issues to do with a crofting community right to buy which are subject to appeal.

Section 91: Register of Crofting Community Rights to Buy

287. Subsection (1) provides that the Crofters Commission will be responsible for the creation and maintenance of a Register of Crofting Community Rights to Buy. Subsection (2) specifies information and documents that must be kept in the Register and provides that these must be kept available for public inspection and in an accessible form.

288. Subsections (3) to (5) give Ministers power to make orders which modify what may be held on that Register and set out the procedure to be followed in making such an order. In particular subsection (5) provides that any such order must be approved by a resolution of the Scottish Parliament.

289. Subsection (6) provides that the Crofters Commission must ensure free public access to the Register with provision of facilities for copying entries on payment of a charge. It is also required to ensure that certified copies of entries will be obtainable on payment of a charge and subsection (7) specifies that such copies may be used as evidence.

Section 92: Avoidance of disposal other than to crofting community body

290. This section provides that after the date on which Ministers approve a right to buy application the owner of the land or interest in land over which the right to buy has been approved may not thereafter sell it to anyone other than the crofting community body. It further provides that the prohibition on sale will end if the body decides not to exercise the right to buy or withdraws the crofting community right to buy application.

Section 93: Limitation on effect of this Part

291. Subsection (1) ensures that the rights of crofters under the Crofters (Scotland) Act 1993 are not affected by the provisions relating to the crofting community right to buy. It also provides
that a crofting community body which buys croft land through the exercise of the crofting community right to buy will be a landlord for the purposes of that Act.

292. Subsection (2) makes it clear that a crofting community body which is created for the purpose of buying croft land under the Bill is not prevented from acquiring any other property by other means.

Section 94: Scottish Land Court: jurisdiction

293. This section empowers the Scottish Land Court to conduct hearings into and determine matters of fact and law relating to the exercise of the crofting community right to buy.

294. Subsection (1) indicates that the powers of the Scottish Land Court are limited in 2 respects. Firstly because decisions under section 76 fall to be made by the Scottish Ministers, and secondly because section 88 gives the sheriff jurisdiction on hearing and determining appeals on points of law against decisions by the Scottish Ministers to consent or refuse to consent to applications. Subsection (1) also indicates that the decision of the Scottish Land Court on the matters over which it exercises jurisdiction is final and subject only to referral of any question of law to the Inner House of the Court of Session. Subsection (2) provides for consequential amendment of section 1(7) of the Scottish Land Court Act 1993 (c.45).

PART 4: GENERAL AND SUPPLEMENTARY

Section 95: General and supplementary provisions

295. This section provides general information in support of previous Parts of the Bill.

296. Subsection (1) defines “Land Court”, “Lands Tribunal”, “Ministers” and “prescribed” for the purposes of the Bill.

297. Subsections (3) to (5) regulates the making of orders and regulations under the Bill.

298. Subsections (6) and (7) detail what constitutes the sending or making of any application, notification or other specified communication, and what constitutes the effective date of such application, notification or other specified communication. Subsection (8) exempts certain procedures from the provisions of subsections (6) and (7).

Section 96: Amendments, repeals and savings

299. This section gives effect to schedule 2, which contains details of amendments, repeals and savings to other Acts.

Section 97: Short title, Crown application and commencement

300. Subsections (3) and (4) provides that the Bill will come into force on such day as Ministers may by order appoint (other than this section and section 95 which will come into
force on the day on which the Bill receives Royal Assent), and that different days may be appointed for different purposes.

SCHEDULES

Schedule 1: Path orders

301. Schedule 1 sets out the procedures that a local authority must follow when proposing to make a path order under section 21.

302. Paragraph 1 requires a local authority to give notice to the owner of the land of its intention to make an order, and to provide a copy of the proposed order. Paragraph 2 allows up to 28 days for objections to the proposed order to be submitted by the owner in the manner set out in the notice. Paragraph 3 provides that if no objections are received or any are withdrawn, the local authority can proceed with the making of the order and it shall take effect.

303. Paragraphs 4 and 5 provide that if an objection is received and not withdrawn, then an order cannot have effect unless confirmed by Ministers. Where an objection is not withdrawn, the owner must be afforded the opportunity for a hearing of any objection before a person appointed by Ministers.

304. Paragraph 6 requires Ministers, after considering the report from the appointed person, to confirm an order with or without modifications, and paragraph 7 provides that the order will have effect once it is confirmed.

305. Paragraph 8 places a duty on a local authority, as soon as an order takes effect, to give notice of this to the owner along with a copy of the order.

306. Paragraph 9 requires a local authority to obtain the consent of a statutory undertaker before making a path order over land on which the statutory undertaker has apparatus. However, paragraph 10 requires that such consent should not be unreasonably withheld. Paragraphs 11 to 14 make provision for the operators of any telecommunications code system in connection with the making of path orders. The telecommunications code is provided for in section 10 of and schedule 2 to the Telecommunications Act 1984, and sets out statutory guidance on the exercise of functions by the operators of a telecommunications system who have been licensed under the provisions of that Act.

Schedule 2: Amendment and repeal of enactments

Trespass (Scotland) Act 1865 (c.56)

307. Paragraph 1 amends section 3 of the Trespass (Scotland) Act 1865, which makes it an offence to occupy or camp on land without the consent of the owner, to provide that this offence does not apply to someone exercising access rights under the Bill.

Countryside (Scotland) Act 1967 (c.36)

308. Paragraph 3 repeals a number of provisions of the Countryside (Scotland) Act 1967:
309. Sub-paragraph (a) repeals the whole of Part II of the 1967 Act, which relates to access to open country, which will be superseded by the creation of access rights and by the new duties and powers of local authorities as introduced by Part 1 of the Bill. Paragraph 5 provides that the repeal of Part II does not in any way affect any compensation claim under section 21 of that Act nor does it affect the rules governing the assessment and payment of compensation under sections 21 to 23 and 70 of that Act.

310. Sub-paragraph (b) repeals sections 30 to 38 (creation, closure and diversion of public paths) of the 1967 Act, which are superseded by sections 20 and 21 of the Bill. However, paragraph 6 provides a saving to enable the continued application of those powers in relation to land in respect of which access rights do not apply.

311. Sub-paragraph (c) repeals section 55 of the 1967 Act which gave Ministers a default power to make byelaws. Sub-paragraph (d) makes an amendment to section 54 of that Act consequential on this repeal. Sub-paragraph (e) removes references to the making of access orders in the provisions for the making, confirmation, coming into force and validity of orders relating to public paths set out in schedule 3. This is because the provisions in the 1967 Act relating to access orders are repealed by the repeal of Part II of that Act.

312. Paragraph 4 amends section 47 of the 1967 Act to the effect that references to rights of way in Part III of that Act are not to be interpreted to include references to access rights created under Part 1 of the Bill. This means that the duties placed on local authorities in respect of rights of way by Part III of the 1967 Act do not extend to access rights.

**Civic Government (Scotland) Act 1982 (c.45)**

313. Paragraph 7 amends the Civic Government (Scotland) Act 1982 to remove the power of local authorities to make byelaws in respect of inland water as set out in section 121 of that Act. This power is replaced by the byelaw making powers in section 12 of the Bill. However, the powers in the 1982 Act to make byelaws in respect of the seashore and adjacent waters are retained.

**Public Order Act 1986 (c.64)**

314. Paragraph 8 inserts a new subsection (9A) in section 14A of the Public Order Act 1986. This clarifies that references in that section to the public’s right of access do not include access rights under the Bill.

**Criminal Justice and Public Order Act 1994 (c.33)**

315. Paragraph 10 inserts new subsections (4A) and (4B) in section 61 of the Act 1994. This section gives the police powers to remove two or more persons from land if they have reason to believe that these persons have become trespassers. This amendment clarifies that people who have ceased to be entitled to exercise access rights for the reasons specified in the new subsection (4A)(a) and (b), will be deemed to be trespassers and, therefore, subject to the provisions in section 61 of the 1994 Act. Subsection (4B) defines “access rights” by reference to the Bill.
316. Paragraph 11 inserts a new subsection (5A) in section 64 of the 1994 Act. This section allows the police to seize a vehicle or sound equipment in certain circumstances. These include where someone has entered land as a trespasser with a vehicle or sound equipment in contravention of a direction, and the new subsection provides that such conduct is not within the scope of access rights.

317. Paragraph 12 inserts a new subsection (1A) in section 68 of the 1994 Act that establishes the offence of aggravated trespass. The new subsection provides that someone exercising access rights in Scotland can be charged with aggravated trespass if engaging in the conduct set out in section 68(1) of the 1994 Act.

The Conservation (Natural Habitats Etc.) Regulations 1994 (S.I. 1994/2716)

318. Paragraphs 13 and 14 amend regulation 3(2) of the 1994 Regulations so as to provide that Ministers and SNH, in exercising their functions under the Bill, must do so in a way that complies with the requirements of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats Directive”).

319. Paragraph 15 inserts a new section 69A into the 1994 Regulations, the effect of which is to ensure that whenever a local authority is preparing a core path plan or is delineating, creating or maintaining a path under the relevant provisions of this Bill in relation to land on which there is situated a (European) site protected for the purpose of Community law, the authority will require to undertake a prior nature conservation impact assessment in accordance with the relevant provisions of the 1994 Regulations.

Acquisition of Land (Authorisation of Procedure) (Scotland) Act 1947 (c.42)

320. Paragraph 16 amends the Acquisition of Land (Authorisation of Procedure) (Scotland) Act 1947 to provide that compulsory acquisitions by Ministers under section 32 or 69 of the Bill are to be carried out in accordance with the procedures set out in that Act.

FINANCIAL MEMORANDUM

COSTS ON THE SCOTTISH ADMINISTRATION

Access

321. The access provisions will give rise to some new costs for the Scottish Administration budget. It will be necessary to increase the staff resources currently devoted to access work to handle the implementation of the new arrangements. There will be a requirement to prepare guidance to local authorities on the implementation of their new duties and powers, particularly those relating to core paths and the establishment of local access forums. There will also be a need to provide informal advice to local authorities and other public bodies, and to land management and recreational interests on the new arrangements.
322. Where objections are sustained to local authority plans of core paths, these will be referred to the Scottish Ministers. Access staff will advise Ministers on individual plans and carry out the preparatory work necessary for the holding of public inquiries. Similar duties will result where objections are sustained to path orders. The additional costs of administering the new arrangements are estimated at £40,000 a year, and they are already included in the forward Departmental running cost estimates.

323. The Administration will also incur costs in holding local inquiries in respect of plans of core paths, path orders and orders exempting particular land or conduct from access rights. The last is not considered likely to result in significant costs. The costs in respect of the first two are estimated at £6,000 in total for core path plans on the basis of 4 inquiries, and £3,000 a year for path orders on the basis of 5 inquiries in years 2 to 7 following the legislation coming into force.

Community and crofting community ownership

324. These provisions will give rise to some new costs for the Scottish Administration budget. However in many respects the level of this will depend directly on the level of uptake, which presently is unknown. The costs set out below are based on the following assumptions (which reflect advice from the Highlands and Islands Enterprise and Scottish Enterprise Community Land Units):

- 25 applications to register interest in the first year, then 5 a year thereafter;
- 2 community purchases a year;
- 1 application to exercise a crofting community right to buy a year;
- 1 community or crofting community body going out of business every 10 years;
- 1 exercise of the new compulsory purchase power every 10 years.

325. Whatever the take-up, it will be necessary to set up a small unit, probably within the Environment and Rural Affairs Department, to administer the two sets of provisions. This unit will:

- maintain and make available to the public a map identifying eligible areas for the community right to buy;
- deal with applications for registration of interest;
- maintain and make available to the public the register of community interest (this will probably be carried out by Registers of Scotland);
- advise Ministers on individual applications;
- deal with applications for exercise of the community right to buy and crofting community right to buy;
- advise Ministers on individual applications; and
- undertake other administrative functions.

326. The costs of administering the new arrangements are estimated at £100,000 a year, and they are already included in forward Departmental running cost estimates.
327. There is also a requirement for the Crofters Commission to maintain and make available to the public the register of crofting community rights to buy. However, given the expected number of occasions on which this right is likely to be exercised it is expected that there will be no significant additional costs to the Commission in respect of this obligation.

328. It will be necessary, once a community body with a registered interest has notified that it wishes to exercise its right to buy, or a crofting community body has successfully applied to exercise its right to buy, to appoint a Government-appointed valuer to set a price for the land. The cost of this valuation process will be met by the Administration. The costs are estimated at £20,000 a year on the basis of 3 valuations a year.

329. The Administration will also incur costs in relation to compensation, to be paid to landowners for certain categories of actual loss resulting directly from the community right to buy legislation. The owner of land may make an application for compensation to the Scottish Ministers if he can demonstrate that he has suffered loss as a direct result of any of the following:

- that the acquisition must be essential to the sustainable development of the crofting community;
- the requirement to follow the notice procedure before transferring ownership of the land;
- there is a late application from the community body to exercise a right to buy where there was no previous registration of interest over land and the landowner has taken steps to market/transfer the land;
- the six months delay before the community body is obliged to pay the price for the land. No compensation will be available from the Scottish Ministers for delay beyond the six month period whether that arises by decision of the Lands Tribunal or otherwise. The parties will normally provide for interest in the Missives;
- the community body initiates a right to buy but fails to complete the purchase (subject to the six month time limit on the payment of compensation mentioned above).

330. The Bill will allow for compensation to be payable to third parties where the transfer of land by a landowner to a community body under the Bill has the effect of extinguishing rights of pre-emption or redemption. Any person losing such a right and suffering actual or financial loss as a result may apply to the Scottish Ministers for compensation.

331. The manner in which loss is to be assessed and the extent of any compensation which is to be paid is to be specified in an order made under the Bill. The overall costs of compensation are estimated at £20,000 a year on the basis of 2 community purchases a year.

332. Under the crofting community right to buy, it will normally be for the crofting community body to meet the costs of compensation. However the Administration may also incur costs in relation to its provision on an exceptional basis of financial support to crofting community bodies towards such compensation costs. The overall costs of financial support
are estimated at no more than £10,000 a year on the basis of 1 crofting community purchase a year.

333. Under the crofting community right to buy the Administration will be required to meet the costs of compensation in cases where an application to exercise the crofting community right to buy is made and Ministers have not approved it. There is provision in the Bill to ensure that Ministers may choose not to consider incompetent applications and in such cases there would be no action taken that would result in owners or others with an interest in the land incurring costs. It is considered likely that on average there will be no more than 1 crofting community right to buy application a year considered by Ministers and the overall costs of compensation in relation to rejected applications are unlikely to be more than £5,000 for any such instances.

334. It is possible that, where a community body or crofting community body that has acquired land becomes insolvent or ceases to trade, or has improperly purchased the land, the land may pass to the temporary ownership and control of the Scottish Ministers. Ministers will wish to pass the land, ideally, to a like-minded body (i.e. one analogous to the original community body or crofting community body) as soon as possible. Ministers will however be obligated to maintain the land until an appropriate owner can be identified. This will incur costs for the Administration for the duration of Ministers’ ownership. Against that however can be set any rent received from tenants. There will also be valuers’ fees, and legal costs. The net costs are estimated at £50,000 in a full year for any such instance.

COSTS ON LOCAL AUTHORITIES

335. The emphasis in the Bill is on the local management of access rights by local authorities advised by local access forums. It places new duties on local authorities and provides new powers for the provision and management of access. Each local authority will be required to establish a system of core paths for its area. It will also be required to establish at least one local access forum for its area. Some local authorities already are very active in the provision and management of access, and will require little by way of additional staff to cope with the new duties. However, others will require to devote additional resources both to planning for access and to managing it on the ground. The legislation provides for local authority rangers to act over all access land. It is estimated that the additional revenue costs to local authorities will be of the order of £5 million a year.

336. Work is currently underway to estimate the costs of establishing core paths. These costs will not be incurred for at least 2 years after the legislation comes into force. Preliminary estimates based on a pilot study by SNH in seven local authorities show wide variation. At present, the best estimate is a figure of around £10 million per year for 10 years. The best estimated cost of the routine maintenance of core paths is currently in the region of £5 million each year over a 10-year period. However, these costs are at the upper end of the scale and may be reduced significantly if there is organised volunteering and if good construction techniques are used to limit ongoing costs.
COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

Scottish Natural Heritage

337. SNH will have a duty to draw up and issue the Scottish Outdoor Access Code. They will also have powers to protect the natural heritage, which may include putting up and maintaining notices, and be expected to promote responsible conduct on the part of both those exercising access rights and land managers through promotional and educational activities. SNH currently provides grant aid to local authorities to employ access officers and rangers but these grants will be phased out once the legislation is in place. However, SNH will continue to provide grant assistance to landowners who wish to carry out works to facilitate access, or to employ rangers to assist in the management of access. It is estimated that the additional spend by SNH on access will be of the order of £5 million in each of the first 2 years after the legislation comes into force, reducing to around £3 million a year thereafter.

Enterprise bodies

338. The Community Land Units of Highlands and Islands Enterprise and Scottish Enterprise will offer support to communities at various stages of the community right to buy and crofting community right to buy process, as they do at present. It is expected that this can be funded from their existing provision.

Scottish Land Fund

339. The purpose of the Scottish Land Fund will be to help communities acquire and regenerate land. The Fund will be entirely funded from the National Lottery “New Opportunities Fund” (£10.8 million over 5 years) and will complement the support available through the Community Land Units of Highlands and Islands Enterprise and Scottish Enterprise.

Sheriff Court

340. The Bill makes a provision for the right to a judicial determination in the sheriff court of the existence and extent of access rights. The estimated costs for 5 applications for a judicial determination are £12,500 per year. There is also the provision for a landowner who has been served with a summary application for preventing access to appeal against this decision. It is estimated that the cost will be £9,000 on the basis of 3 appeals per year.

341. A landowner, a community body, a crofting community body or a member of a community may appeal to the sheriff court against any decision made by Ministers in relation to a registration or the granting of a right to buy. The full costs are estimated at £4,000 per appeal, on the basis of 20 appeals in the first year and 4 appeals per year thereafter.

Lands Tribunal for Scotland

342. The ECHR requires that an independent appeals mechanism be made available and the Bill allows for this in respect of valuations. Such appeals for the community right to buy will be handled by the Lands Tribunal. These costs are estimated at £4,000 per appeal on the basis of 4 appeals per year, and are likely to be met by Ministers.
Scottish Land Court

343. Based on the Scottish Land Court being required to consider only one or two crofting community right to buy cases per year and assuming that the current level of work does not increase significantly, it is not envisaged that the jurisdictions to be conferred on the Court by the Bill will increase the Scottish Land Court’s costs.

Landowners, community bodies, crofting community bodies, other interested parties

344. In relation to the 3 appeals mechanisms mentioned above – i.e. those to the Lands Tribunal, the Scottish Land Court and the sheriff court – some costs may be incurred by those using the various appeals procedures laid down in the Bill. The Bill allows for 5 areas of appeal, as follows:

- **Registration:** A landowner may appeal against registration of a community interest; alternatively, a community body can appeal against non-registration.

- **Community right to buy:** The landowner may appeal against approval of a community’s right to buy. A community body may appeal against refusal of an application.

- **Crofting community right to buy:** The landowner or other interested parties may appeal against approval of a crofting community’s right to buy. A crofting community body may appeal against refusal of an application.

- **Purchase price:** Under Part 2, a landowner or community body may appeal to the Lands Tribunal for Scotland if they disagree with the price assessed by the Government-appointed valuer.

- **Purchase price:** Under Part 3, a landowner or crofting community body may appeal to the Scottish Land Court if they disagree with the price assessed by the Government-appointed valuer.

- **Crofting community right to buy compensation:** A landowner or a crofting community body may, if there is no agreement on the amount of compensation payable, refer that matter to the Scottish Land Court for determination of the amount to be paid.

345. Where an appeal is raised, costs may be incurred by the parties to cover general administrative duties, valuer’s attendance fees at the hearing (or in court), court fees (if appeal is referred) and any travel and subsistence costs. **These costs are estimated at up to £4,000 per appeal, on the basis of 20 appeals in the first year and 8 appeals per year thereafter.**

Legal aid

346. There is the possibility of extra costs, particularly in the year after the Bill comes into force, due to applications for legal aid where landowners or other individuals seek legal advice on the provisions of the Bill, or lodge appeals. It is difficult to know how many people are likely to pursue this, but estimates suggest that the costs are unlikely to exceed £100,000 in the first year. Costs in subsequent years are likely to be lower.
Community bodies and crofting community bodies

347. Community bodies and crofting community bodies who opt to use the new legislation will incur some initial set-up costs. If they choose to exercise their right to buy they may incur costs in employing professional advice and conveyancing costs. The Community Land Units may help with these costs. Additionally they will incur the purchase costs and the crofting community body will also be likely to incur expenditure on compensation. Should the community body or crofting community body choose to appeal at any stage, costs will be incurred for this process. Should any cases proceed to the Court of Session, additional costs will arise.

Landowners

348. As regards access, landowners will incur few additional costs. They may choose to contribute to the provision and maintenance of paths over their land. They may also carry out other works to facilitate access and employ rangers, and grant assistance may be available for these purposes from SNH.

349. As regards the community right to buy, landowners will normally incur costs in relation to seeking professional advice during any sale period, i.e. solicitors’ and estate agents’ fees. The Bill will therefore allow for compensation to be paid only for additional costs incurred, over and above those normally experienced, as a direct result of the new legislation. As regards the crofting community right to buy, landowners will incur legal and other transaction costs. The Bill will allow for compensation to be paid in respect of all costs incurred as a direct result of the new legislation. Under either right to buy, should the landowner choose to appeal at any stage, costs will be incurred for this process. Should any cases proceed to the Court of Session, additional costs will arise.

350. Anyone buying property may also see a slight increase in charges for standard searches of the Land Register, which will need to include a check on whether the land in question is subject to a registered interest under Part 2.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

351. On 27 November 2001, the Minister for Justice (Mr Jim Wallace) made the following statement:

“In my view, the provisions of the Land Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

352. On 26 November 2001, the Presiding Officer (Sir David Steel) made the following statement:

“In my view, the provisions of the Land Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Land Reform (Scotland) Bill (SP Bill 44) as introduced in the Scottish Parliament on 27 November 2001

LAND REFORM (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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