

# COMMUNITY EMPOWERMENT (SCOTLAND) BILL

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## DELEGATED POWERS MEMORANDUM

### PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Community Empowerment (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

### Outline of Bill provisions

3. The Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:
  - Empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
  - Support an increase in the pace and scale of Public Service Reform by cementing the focus on achieving outcomes and improving the process of community planning.
4. The Bill comprises 9 Parts with 5 Schedules:
  - **Part 1** places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government's internationally acclaimed "Scotland Performs" framework.
  - **Part 2** places community planning partnerships on a statutory footing and imposes duties on them around the planning and delivery of local outcomes. Schedule 1 lists the bodies which are to be community planning partners. This Part replaces provision in Part 2 of the Local Government in Scotland Act 2003, which is repealed by Schedule 5.
  - **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered. Schedule 2 lists "public service authorities" to whom participation requests can be made.

- **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to the 2003 Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
- **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish Ministers. The list of “relevant authorities” affected is given in Schedule 3.
- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.
- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and ploholders. This replaces the provisions of the Allotments (Scotland) Acts 1892, 1922 and 1950, which are repealed in their entirety by Schedule 5, and some provisions of the Land Settlement (Scotland) Act 1919.
- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities. It does this by inserting a new section into the Local Government (Financial Provisions etc.) (Scotland) Act 1962.
- **Part 9** makes general provisions in relation to the Bill, including provision about subordinate legislation, ancillary provision and commencement. Schedule 4 makes minor and consequential amendments to other legislation, and Schedule 5 provides for repeals.

### **Rationale for subordinate legislation**

5. In deciding whether provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has considered the need to:

- Strike the right balance between the importance of the issue and providing sufficient flexibility to respond to changing circumstances without the need for primary legislation;
- Anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament;
- Make proper use of valuable parliamentary time;
- Allow detailed administrative arrangements to be kept up to date within the basic structures set out in the Bill; and
- Take account of the likely frequency of amendment.

6. The relevant provisions are described in detail below. For each provision, the memorandum sets out:

- The person upon whom the power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- Why it is considered appropriate to delegate the power to subordinate legislation and the purpose of each such provision; and
- The parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any.

## **Delegated powers**

### **Part 2 – Community Planning**

#### **Section 4(5) – Power to modify schedule 1 community planning partners**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

7. Section 4 defines “community planning”, “community planning partners” and “community planning partnerships”. Community planning is planning that is carried out in the area of a local authority so that public services improve the achievement of local outcomes. Schedule 1 lists the bodies who are community planning partners.

8. Subsection (5) enables the Scottish Ministers to amend the list of community planning partners in schedule 1 by regulation. Subsection (6) further states that the regulations may provide that a community planning partner may participate in community planning for a specific purpose, where participation is required in relation to some of that partner’s responsibilities but not others.

#### *Reason for taking power*

9. Schedule 1 contains a list of bodies who are partners in the community planning partnership and includes a wide range of public bodies that may have a role in influencing local outcomes. The power in subsection (5) is to provide flexibility in future should changes be required to the list of bodies in schedule 1. As the bodies listed in schedule 1 have a range of functions and duties it may be necessary to be more specific about the purpose for which a community planning partner is to be involved in community planning so as to provide any necessary clarity as to their role, which is the reason for the power in subsection (6).

#### *Reason for choice of procedure*

10. It is not considered that the inclusion or removal of particular bodies in the list of community planning partners is sufficiently significant to merit affirmative procedure. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

### **Section 8(3) – Power to modify list of community planning partners with a governance role**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

11. Section 8 places governance responsibilities on specified community planning partners for the purpose of achieving effective community planning. The partners specified in subsection (2) must facilitate community planning and take reasonable steps to ensure that the partnership operates efficiently and effectively.

12. Subsection (3) enables Ministers to modify by regulation the list of community planning partners set out in subsection (2) to whom the governance duties apply, either by adding a new partner, removing a partner or amending an entry.

#### *Reason for taking power*

13. The community planning partners set out in subsection (2) are those most directly involved in community planning and they therefore have a critical role to play in ensuring that the process runs as efficiently and effectively as possible. The power in subsection (3) is to provide flexibility in future should changes be required to the list of bodies in subsection (2).

#### *Reason for choice of procedure*

14. The power relates to making changes that may be required as the nature and practice of community planning evolves and the provisions of this part of the Bill take effect. It is not considered that the placing governance responsibilities on bodies which are community planning partners is sufficiently significant to merit affirmative procedure. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

### **Section 12(1) – Power to establish a body corporate for community planning purposes**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

#### *Provision*

15. Section 12 of the Bill replaces the provisions of section 19 of the Local Government in Scotland Act 2003 and gives the Scottish Ministers a power to establish corporate bodies to co-ordinate community planning and to say what their constitution and functions are. As a body corporate, a community planning partnership could, for example, hold its own budgets and assets and employ its own staff.

16. Subsection (1) allows the Scottish Ministers to establish such a body corporate by regulations, following an application made by a local authority and at least one other community planning partner in the area.

17. Further detail is provided in subsections (2) to (4), including the information to be included in the application and the type of provision which the regulations made under subsection (1) may include. Subsection (4) provides that a corporate body established under subsection (1) may discharge a function, even where another enactment specifies that as the function of another body or prevents the carrying out of that function by the new corporate body.

*Reason for taking power*

18. The power is required to retain the option of establishing corporate bodies as was provided under section 19 of the Local Government in Scotland Act 2003. With Community Planning Partnerships now having a statutory basis, it is considered appropriate to translate these powers to the Bill. The Scottish Government does not want to limit the options that are available to community planning partners should the need arise in the future.

*Reason for choice of procedure*

19. The Scottish Government considers affirmative procedure is appropriate as the establishment of a corporate body can be a significant step and may include functions about community planning that override another enactment or rule of law.

**Section 12(2)(d) – Power to prescribe other matters to be addressed in an application for incorporation**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

20. As stated above, section 12 of the Bill replaces section 19 of the Local Government in Scotland Act 2003 and gives the Scottish Ministers a power to establish corporate bodies with community planning functions.

21. Subsection (2) provides that an application to establish a corporate body must include certain information, including information on consultation undertaken, representations received and the proposed functions of the body. Subsection (2)(d) provides a power to make regulations setting out other matters that the Scottish Ministers may want to be included in an application.

*Reason for taking power*

22. The power allows flexibility when developing the detail of the content of the application to establish a corporate body. It is important that the application contains all the relevant information that the Scottish Ministers require. Subsection (2)(a) to (c) requires that certain information be provided but as the detail of what should go in the application is developed it may be appropriate to require additional information. Provision regarding additional information is

likely to be fairly detailed. Further, from time to time in the light of practical experience the Scottish Ministers may wish to make changes to the additional information that an application is to contain.

*Reason for choice of procedure*

23. The question of what additional information should be contained in an application is an administrative matter. It is therefore considered appropriate that regulations made under subsection (2)(d) should be subject to negative procedure, which will achieve the best balance between use of Parliamentary time and resource on the one hand and the content of the regulations on the other.

**Part 3 – Participation Requests**

**Section 15(2)(a) – Designation of a community participation body**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Order**  
**Parliamentary procedure: Negative procedure**

*Provision*

24. Section 15 defines a “community participation body”, which is the type of body which can make a participation request under section 17 to participate in an outcome improvement process. A community participation body may be a community-controlled body, a community council or a body, or a body of a class of bodies, designated by the Scottish Ministers.

25. Subsection (2)(a) provides that the Scottish Ministers may by order designate individual bodies as community participation bodies.

*Reason for taking power*

26. Community bodies come in many different forms. The intention of the policy is that as wide a range of community bodies as possible should be able to act as a community participation body and make a request to a public service authority to participate in an outcome improvement process. It is important that community participation bodies are open, inclusive and represent their community, and in most cases this should be demonstrated by meeting the criteria for a community-controlled body. However, there may be bodies which are established in a different way, especially those established before current approaches became standard, which Ministers still consider should be able to act as community participation bodies. The power will allow the Scottish Ministers to designate additional community bodies for this purpose. Further, it will allow the Scottish Ministers to de-designate bodies if needed, for example, if the body has disbanded or are no longer in existence for whatever reason.

*Reason for choice of procedure*

27. The Scottish Government considers negative procedure is appropriate. The power will allow particular bodies of bodies to be a community-controlled body for the purposes of the Act. The nature of the power is that it may involve the addition, from time to time, of individual

bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure.

### **Section 15(2)(b) – Designation of a class of bodies as community participation bodies**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

#### *Provision*

28. As stated above, section 15 defines a “community participation body”, which is the type of body which can make a participation request under section 17, and it may be a community-controlled body, a community council or a body, or body of a class of bodies, designated by the Scottish Ministers.

29. Subsection (2)(b) provides that the Scottish Ministers may by order designate a whole class of bodies so that any body of that type will qualify as a community participation body.

#### *Reason for taking power*

30. As detailed above under section 15(2)(a), the intention of the policy is that as wide a range of community bodies as possible should be able to act as a community participation body and make a request to a public service authority to participate in an outcome improvement process, provided that they are open, inclusive and representative. If it appears that the characteristics of a type of body meet those requirements, the power will allow the Scottish Ministers to designate that class of bodies as community participation bodies for this purpose. Further, it will allow the Scottish Ministers to de-designate that class of bodies if needed.

#### *Reason for choice of procedure*

31. The Scottish Government considers negative procedure is appropriate. The nature of the power is that it may involve the addition, from time to time, of classes of bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure. .

### **Section 16(2) – Power to modify schedule 2 public service authorities**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

#### *Provision*

32. Schedule 2, introduced by section 16, lists public service authorities to which a participation request can be made. This includes local authorities, the Scottish Ministers, Health Boards, and other Scottish public bodies. The public bodies selected are involved in providing or supporting local services.

33. Subsection (2) enables the Scottish Ministers to remove or amend an entry on the list of public service authorities in schedule 2 by order.

*Reason for taking power*

34. Schedule 2 provides a list of public bodies to which a participation request can be made. The bodies listed in schedule 2 may change over time and the power in subsection (2) is to provide flexibility in future should changes be required, either by removing the body from the list or making any necessary amendments to an entry.

*Reason for choice of procedure*

35. The power relates to modifications that may be required based on future changes to the bodies listed in schedule 2. It is therefore considered appropriate that the negative procedure be used. The power enables modifications, from time to time, of individual bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure and that negative procedure provides the appropriate balance required between scrutiny and the use of parliamentary resource.

**Section 16(3)(a) – Power to designate a public service authority**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

*Provision*

36. In addition to the bodies listed in schedule 2, participation requests can also be made by a person that is designated as a public service authority or that falls within a class of persons designated as public service authorities.

37. Subsection (3) allows the Scottish Ministers to designate a public service authority by order. Subsections (4) to (9) provide more detail on who may be designated as a public service authority and also provide that in making an order the Scottish Ministers may exclude some services from being subject to participation requests.

*Reason for taking power*

38. The public bodies listed in schedule 2 are involved in providing or supporting local services. Once participation requests are in operation and their use and impact have been determined it may be appropriate to designate other public bodies that provide or support local services as a public service authority. Further, should new public bodies that provide or support local services be created in future it may be considered appropriate to designate the public body as a public service authority.

*Reason for choice of procedure*

39. The Scottish Government considers negative procedure is appropriate. The power allows a particular body to be a public service authority to which a participation request can be made. This may involve the addition, from time to time, of individual bodies and it is considered that

this sort of modification is not of such significance as to require affirmative procedure. It is therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

### **Section 16(3)(b) – Power to designate a class of public service authorities**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

#### *Provision*

40. In addition to the bodies listed in schedule 2 and to persons designated as public service authorities under section 16(3)(a) participation requests can also be made by a person that falls within a class of persons designated as public service authorities.

41. Subsection (3)(b) provides that the Scottish Ministers may by order designate a class of persons so that any person of that class will qualify as a public service authority. Subsections (4) to (7) provide more detail on who may be designated as a public service authority.

#### *Reason for taking power*

42. As detailed above under section 16(3)(a), it may be appropriate to designate other persons that provide or support local services as a public service authority. In addition, it may be that a person of a class of body should be treated as a public service authority, and section 16(3)(b) will allow the Scottish Ministers to designate that class of persons for this purpose.

#### *Reason for choice of procedure*

43. The Scottish Government considers negative procedure is appropriate. The nature of the power is that it may involve the addition, from time to time, of classes of bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure. It is therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

### **Section 18(1) – Power to make further provision regarding participation requests**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

44. Section 18(1) gives the Scottish Ministers a power to make regulations with provision about participation requests in addition to that contained in section 17. Subsection (2) provides that the regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, and which information is to be provided in connection with requests (in addition to the information required under section 17(2)).

*Reason for taking power*

45. Under section 17(1) participation requests allow a community participation body to make a request to a public service authority to permit the body to participate in an outcome improvement process, which is a process established by the authority with a view to improving an outcome that results from, or is contributed to by virtue of, the provision of a public service. Section 17(2) describes the information which must accompany the request.

46. The Scottish Government considers that section 18(1) is necessary to require that further information is provided and to make provision on the procedure for making requests and for handling them.

*Reason for choice of procedure*

47. Any further provision that is required regarding participation requests and the process and procedure to be used is a largely administrative matter. The regulations may also need to change over time to reflect practical experience in the use of participation requests. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 19(7)(a) – Power to prescribe a time for a decision notice to be given**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

48. Section 19 provides that a public service authority must decide whether to agree to or refuse any participation request it receives and sets out the matters which must be taken into consideration. Subsection (6) requires the authority to give notice of its decision to the community participation body before the end of the period mentioned in subsection (7) and if it refuses the request, it must give reasons for that refusal.

49. Under subsection (7) the period referred to in subsection (6) is either a period prescribed in regulations under subsection (7)(a) or such longer period as may be agreed between the authority and the community participation body.

*Reason for taking power*

50. The Bill provides the legislative framework around which decisions on participation requests will be made and following enactment of the Bill the Scottish Government will consult on what is a reasonable time period for a decision to be made by public service authorities.

*Reason for choice of procedure*

51. The period of time for a public service authority to respond to a participation request is an administrative matter and will be informed by a short and focussed consultation. It is also possible that the time period may change in future. It is therefore considered appropriate that the

negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 19(8) – Power to make provisions regarding the information contained in a decision notice and the manner in which it is to be given**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

52. Section 20 describes the information which must go in a decision notice when a public service authority decides to agree to a participation request.

53. Section 19(8) allows the Scottish Ministers to set out in regulations other information that a decision notice is to contain and also the manner in which a decision notice is to be given.

*Reason for taking power*

54. The power allows flexibility when developing the detail of the decision notice procedure. It will be important that the decision notice will contain relevant information, and that it is given in an appropriate manner which is accessible to members of the community participation body. Section 20 provides for a certain amount of information to be provided about the outcome improvement process, when a participation request is successful. However, as the detail of the decision notice procedure is developed it may be considered appropriate to include other information. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the information that a decision notice is to contain and also the manner in which a decision notice is to be given.

*Reason for choice of procedure*

55. The information that a decision notice is to contain and the manner in which a decision notice is to be given are administrative matters. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 21(6) – Power to specify information to be published about the outcome improvement process**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

56. Section 21 applies when a decision notice agreeing to participation has been sent but the outcome improvement process has not yet been established. It provides that the community participation body may, within 28 days, make representations in relation to the proposed process.

The public service authority must within 28 days of the expiry of the 28 day period for making representations give a notice containing details of the outcome improvement process that is to be established.

57. Subsection (6) is a power to make regulations specifying information about the outcome improvement process which must be published.

*Reason for taking power*

58. The power in subsection (6) will enable Ministers to ensure that appropriate information about the outcome improvement process is published on a website or electronically.

*Reason for choice of procedure*

59. The specification of information about the outcome improvement process that must be published is a largely procedural and administrative matter. The regulations may also change over time to reflect experience and practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 24(3) – Power to specify information about the modification of an outcome improvement process**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

60. Section 24 provides that the public service authority may modify the outcome improvement process, following consultation with the community participation body.

61. Subsection (3) provides that, if the public service authority does modify the outcome improvement process, it must publish such information about the modification as may be specified in regulations made by the Scottish Ministers.

*Reason for taking power*

62. The Scottish Ministers may require authorities to publish relevant information regarding an outcome improvement process, by regulations made under section 21(6) as outlined above. This additional power is required to ensure that where changes to established outcome improvement processes have been made, then the modifications will also be published.

*Reason for choice of procedure*

63. The specification of information about modifications to an outcome improvement process that must be published is a largely procedural and administrative matter. The regulations may also change over time to reflect experience and practice. It is therefore considered appropriate

that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 25(4) – Power to make provision about reports that are made as a result of a participation request**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

64. Where a participation request has been made and an outcome improvement process has been completed, section 25 requires the public service authority to publish a report on the process and describes the information to go in the report.

65. Subsection (4) gives the Scottish Ministers power to make regulations about reports, including additional information they must contain.

*Reason for taking power*

66. Section 25(2) describes information about the outcome improvement process to be contained within a report. The subsection (4) power to make additional provision about reports allows for flexibility when developing the detail of the reporting process. It will be important that the report contains relevant information on the results of the outcome improvement process.

*Reason for choice of procedure*

67. The publication of a report on an outcome improvement process is a largely procedural and administrative matter and are likely to be fairly detailed. The regulations may also change over time to reflect experience and practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Part 4 – Community Right to Buy**

Part 4 of the Bill makes amendments to the Land Reform (Scotland) Act 2003 (“the 2003 Act”).

**BODIES THAT MAY COMPRISE A “COMMUNITY BODY” FOR THE PURPOSES OF THE COMMUNITY RIGHT TO BUY**

**Section 28(2) – inserting section 34(A1)(b) into the 2003 Act - Power to prescribe bodies that are “community bodies”**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

*Provision*

68. Section 28 of the Bill amends section 34 of the 2003 Act to extend the types of body which may be eligible to become community bodies under Part 2 of the 2003 Act to include Scottish Charitable Incorporated Organisations (“SCIOs”) and any other type of body that Ministers may specify in regulations. These regulations may also specify the requirements that such a body must satisfy in order to be a community body.

*Reason for taking this power*

69. Since the 2003 Act came into operation, new legal structures have been developed which enable communities to be able to undertake a range of activities for their community, including owning land. The Scottish Government anticipates that further legal bodies could emerge that would be suitable community bodies for the purpose of Part 2 of the 2003 Act. Being able to make regulations providing for such bodies to be community bodies would allow Ministers to be able to respond quickly to such developments.

*Choice of procedure*

70. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny to such provision. Only specific types of legal entities are able to be community bodies for the purposes of the 2003 Act. Any extension of the bodies that can be a community body may have a significant impact of who can make use of the right to buy in Part 2 of the 2003 Act. Use of this power could therefore have a significant impact on the scope of the legislation and so the affirmative procedure is appropriate.

## **REQUIREMENTS FOR A COMMUNITY BODY**

**Section 28(6) – insertion of section 34(4A) and (4B) into the 2003 Act - Power to make regulations to amend the requirements for a body to be a community body.**

**Power conferred on: Scottish Ministers**  
**Power Exercisable by: Regulations**  
**Parliamentary Procedure: Affirmative procedure**

*Provision*

71. Section 28(6) of the Bill inserts a new section 34(4A) into the 2003 Act. Section 34(4A) gives the Scottish Ministers the power to make regulations modifying the criteria which must be met by companies limited by guarantee and SCIOs in order to be community bodies under Part 2 of the 2003 Act.

72. Section 28(6) also inserts a new section 34(4B) into the 2003 Act. Section 34(4B) provides that if the Scottish Ministers make regulations under section 34(A1)(b) then they can also amend section 35(A1) and (1) of the 2003 Act by regulations.

73. Any regulations made under section 34(A1)(b) would set out the bodies, other than companies limited by guarantee and SCIOs, which may be classed as “community bodies” for the purposes of the 2003 Act. Section 35(A1) prohibits the alteration (without consent of Ministers) of the memorandum, articles of association or constitution of a community body

during the relevant period (as defined in section 35(A2) of the 2003 Act). The Scottish Ministers can make regulations using the power inserted in section 34(4B) to amend section 35(A1) and (1) of the 2003 Act to extend the prohibition to any different kinds of constitutive document which may apply to the new types of body which are eligible to become community bodies.

*Reasons for taking power*

74. Ministers already have powers to disapply the requirement at section 34(1)(c) of the 2003 Act. It is appropriate that Ministers also have power to vary the requirements for a community body in section 34(1) and (1A) of the 2003 Act. The power to make regulations gives Ministers flexibility to make these changes.

75. Where Ministers make regulations extending the bodies that may comprise a “community body”, Ministers will also need to be able to set out the requirements that these bodies need to satisfy to be a community body. The power to make regulations gives Ministers flexibility to set out these provisions and to make any changes to them in the future.

*Choice of procedure*

76. It is considered appropriate to allow the Scottish Parliament a high level of scrutiny to the detail of any changes to primary legislation. Regulations made under section 34(4A) and (4B) of the 2003 will amend primary legislation.

**DEFINITION OF A “COMMUNITY”**

**Section 28(7) – amendments to section 34(5) of the 2003 Act – Power to define a “community”**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

77. For the purposes of the community right to buy in Part 2 of the 2003 Act, section 34(5) of the 2003 Act provides that a “community” is defined by reference to a geographical area. The geographical area is currently defined by reference to a postcode unit or units, unless otherwise directed by Ministers. Section 28(7) amends section 34(5) of the 2003 Act so the provision that allows the Scottish Ministers to direct that a “community” can be defined other than by reference to postcode units is removed and the Scottish Ministers are given a power to make regulations which may set out a specific type or types of area, in addition to postcode unit or units, which can be used to define a “community”.

*Reason for taking this power*

78. There have been comments that postcodes do not provide community bodies with the greatest flexibility in describing their “community”. In particular, some communities comprise a large number of postcodes which may also change frequently, making it cumbersome to describe their “community”. There are a number of building blocks which could be used in addition to

postcodes and postcode areas, such as settlement areas and wards. To list these in the primary legislation would be cumbersome and regulations provides flexibility in making any changes to the list of criteria to describe a “community”.

#### *Choice of procedure*

79. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The power does not define what amounts to a community in any particular case but sets out another method which may be used to define a particular community, such as settlement areas or wards. This is therefore essentially an administrative matter .

### **DESCRIPTION OF LAND TRANSFERRED BY A LANDOWNER OR HERITABLE CREDITOR AS AN “EXEMPT” TRANSFER**

#### **Section 33 – insertion of section 41(3)(b) into the 2003 Act – power to specify the description of land**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

80. Landowners and creditors in a standard security with a right to sell the land are prohibited from transferring land or taking action with a view to transferring land that is subject to a registered interest for so long as the interest is registered, other than to a community body which has a registered interest in that land or in accordance with section 40(4) of the 2003 Act which provides for “exempt transfers”. Section 33 of the Bill inserts subsection (3) into section 41 of the 2003 Act and sets out that where a landowner or a heritable creditor transfers land by means of exempt transfer they must provide Ministers with certain information including a description of the land being transferred, including maps, plans or other drawings. Section 41(3)(b) of the 2003 Act enables Ministers to make regulations setting out the specifications that maps, plans and drawings describing the land transferred must be prepared in accordance with.

#### *Reason for taking this power*

81. Ministers are currently not required to be informed if a landowner or creditor in a standard security with a right to sell land makes a transfer of land which is exempt from the prohibition on transfers (by virtue of section 40(4) of the 2003 Act). In some cases landowners or creditors have transferred all of the land which has a registered interest in it, while in other cases they have transferred only part of the land, or have transferred it to more than one owner. This power enables Ministers to make regulations setting out how the land that has been subject to an exempt transfer should be described when Ministers are notified of the transfer. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.

*Choice of procedure*

82. It is considered appropriate that this power is subject to negative procedure. This provision is required to set out in detail how land is to be described in informing Ministers about the transfer of that land. This is therefore an administrative matter.

**BALLOT PROCEDURE**

**Section 37 – insertion of section 51A(2)(b) into the 2003 Act - Power to prescribe information to be provided to the balloter**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

83. Section 37 of the Bill inserts a new section 51A into the 2003 Act to provide for an independent balloter to undertake the community ballot under section 51(1)(a) of the 2003 Act.

84. Section 51A(2)(a) of the 2003 Act sets out that Ministers must provide the balloter with a copy of the of the application to register an interest in land made by the community body. Section 51A(2)(b) allows the Scottish Ministers to make regulations which specify other information which must be provided by the Scottish Ministers to the balloter within the timeframe set out in section 51A(3).

*Reason for taking these powers*

85. It is important that an independent balloter is provided with the appropriate information by Ministers so that the ballot is conducted in an appropriate manner. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.

*Choice of procedure*

86. It is considered that the use of these powers can be left to the level of Parliamentary scrutiny attached to the negative procedure. The matters to be detailed in regulations are details of procedure. For example, these matters could relate to the contact details of the community body, the statutory timescales when the ballot is to be completed and the ballot return made to the Scottish Ministers, the community body and other specified persons. The current ballot procedures under the 2003 Act are set out in regulations subject to the negative procedure.

**BALLOT PROCEDURE**

**Section 37 – insertion of section 51A(6) into the 2003 Act - Power to prescribe information to be provided to the balloter by a community body**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

87. Section 37 of the Bill inserts a new section 51A into the 2003 Act to provide for an independent balloter to undertake the community ballot under section 51(1)(a) of the 2003 Act.

88. New section 51A(6) requires the community body to provide the balloter with certain information. The Scottish Ministers may make regulations setting out the specific information required and the form in which this information should be provided.

*Reason for taking these powers*

89. It is important that an independent balloter is provided with the appropriate information by the community body so that the ballot is conducted in an appropriate manner. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.

*Choice of procedure*

90. It is considered that the use of these powers can be left to the level of Parliamentary scrutiny attached to the negative procedure. The matters to be detailed in regulations are details of procedure. For example, this could include requiring the community body to provide the balloter with the ballot question on which the community is to be balloted. The current ballot procedures under the 2003 Act are set out in regulations subject to the negative procedure.

**REQUIREMENT FOR A COMMUNITY BODY TO PROVIDE CERTAIN INFORMATION TO SCOTTISH MINISTERS**

**Section 38 – insertion of section 51B(2)(b) and (3) - Power to make regulations which set out the information a community body must provide to Scottish Ministers**

**Powers conferred on:** Scottish Ministers  
**Powers exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

91. Section 38 of the Bill inserts a new section 51B into the 2003 Act which supplements section 51 of the 2003 Act. Section 51 of the 2003 Act sets out that before a community body can exercise its right to buy (after the right to buy has been activated), both the approval of the community and the consent of the Scottish Ministers are required. The Scottish Ministers are not able to grant consent unless they are satisfied that the conditions set out in subsections 51(3)(a)-(e) are met. In making this decision, new section 51B of the 2003 Act requires Ministers to take into account the information provided by the community body and any other information they consider relevant. New section 51B(2)(b) gives the Scottish Ministers the power to make regulations set out the information that the community body are required to provide to Ministers. New section 51B(3) allows the Scottish Ministers to set out in regulations what form this information should be provided in.

*Reason for taking these powers*

92. In the past community bodies have provided Ministers with a wide range of information in relation to their right to buy, and in particular as to why their proposal for the land is compatible with furthering the achievement of sustainable development. Sometimes this information is extensive, and other times it is succinct; sometimes it can include all the information that Ministers need to take a decision, while sometimes points are not included or require to be clarified. This provision allows Ministers to set out the information that they need to consider when making a decision. It also provides greater transparency in the assessment process and for the streamlining of information to be provided by a community body. It is considered that the level of procedural detail and detail required to be set out is more appropriately left to regulations.

*Choice of procedure*

93. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The information that a community body will be required to provide include matters such as evidence as to why the proposals for land will further sustainable development and the detail as to the information which is to be provided is not appropriate for primary legislation. This level of procedural detail is best dealt with by way of the negative procedure.

**BALLOT NOT CONDUCTED AS PRESCRIBED**

**Section 40 – insertion of section 52(7) into the 2003 Act - Ballot not conducted as prescribed**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

94. A ballot must be conducted in accordance with the requirements set out in regulations made by the Scottish Ministers under section 52(1) of the 2003 Act. A new subsection 52(7) is being inserted into the 2003 Act by section 40 of the Bill. Section 52(7) allows the Scottish Ministers to make further regulations in respect of: reviewing how the ballot was conducted; notifying specific persons that the ballot was not conducted correctly; requiring a further ballot to be conducted and specifying the persons who are to undertake this; and how that further ballot is to be conducted, and that timescales for undertaking that further ballot. In addition, these regulations under section 57(7) may state who is to conduct the review of the first ballot and the action which can be taken by such person following the review.

*Reason for taking this power*

95. While most of the ballots undertaken by the community right to buy have been undertaken in accordance with the 2003 Act and the regulations made under it, there have been a small number of cases where the ballot has not been so conducted. Clarity is needed as to what happens when there is a flawed ballot and also the administrative procedures to deal with such a ballot. It is considered that the level of procedural detail which is to be set out is more appropriately left to regulations.

*Choice of procedure*

96. It is appropriate that this power is subject to negative procedure because it will be used to set details of procedure. This is also essentially an administrative matter.

**Section 48 of the Bill**

Section 48 of the Bill inserts a new Part 3A into the 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, for the purposes of the sustainable development of that land, where there is no willing seller.

**ELIGIBLE LAND**

**Section 48 – inserted section 97C(2) of the 2003 Act - power to prescribe whether land is eligible for the purposes of Part 3A**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

*Provision*

97. This provision requires Ministers to have regard to matters set out in regulations in determining whether land is, in their opinion, eligible for the purposes of Part 3A of the 2003 Act.

*Reason for taking this power*

98. The Bill does not define what is abandoned or neglected land for the purposes of Part 3A of the 2003 Act. It is considered that as Ministers will need to have regard to a number of matters which are too detailed to include in the primary legislation and are more appropriately set out in regulations.

*Choice of procedure*

99. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.

**Section 48 – inserted section 97C(3)(a) of the 2003 Act - power to prescribe that eligible land does not include certain land for the purposes of Part 3A**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

*Provision*

100. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(a) provides that

eligible land does not include land on which there is a building or structure that is an individual's home, other than buildings or structures that may be set out in regulations by Ministers.

*Reason for taking this power*

101. The intention is that eligible land should not include an individual's home. The regulation making power will enable there to be flexibility as to exactly what buildings or structures constitute an individual's home.

*Choice of procedure*

102. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes "eligible land" is fundamental to the scope and application of Part 3A.

**Section 48 – inserted section 97C(3)(b) of the 2003 Act - power to prescribe that eligible land does not include certain land for the purposes of Part 3A**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Affirmative procedure**

*Provision*

103. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure that is an individual's home, other than buildings or structures that may be set out in regulations by Ministers. Section 97C(3)(b) provides that eligible land does not include land set out in regulations that pertains to an individual's home that is excluded from being eligible land by section 97C(3)(a).

*Reason for taking this power*

104. The regulation making power will give the Ministers the ability to ensure that land pertaining to a person's home, such as a private garden (to the extent that this does not fall within section 97C(3)(a)) is excluded from being eligible land. The description of the type of land that could be excluded from the definition of "eligible land" by this power is expected to be detailed and therefore is better suited for secondary legislation.

*Choice of procedure*

105. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes "eligible land" is fundamental to the scope and application of Part 3A.

**Section 48 – inserted section 97C(3)(f) of the 2003 Act - power to prescribe that eligible land does not include certain land for the purposes of Part 3A**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

*Provision*

106. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(f) sets out that Ministers may set out in regulations other descriptions of land that is not eligible land.

*Reason for taking this power*

107. This power will enable Ministers to set out other classes of land that are not “eligible land”. This is important in setting out what land is outwith the scope of Part 3A as it will enable Ministers to exclude certain types of land from Part 3A should in the future this be considered to be appropriate. This land may need to be described in detail, and therefore it is appropriate that this is set out in secondary legislation.

*Choice of procedure*

108. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.

**Section 48 – inserted section 97C(4) of the 2003 Act - power to prescribe buildings or structures that are to be treated as an individual’s home for the purposes of section 97C(3)(a)**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

*Provision*

109. Section 97C(1) provides that land is eligible for the purposes of Part 3A if in the opinion of Ministers it is wholly or mainly abandoned or neglected. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure that is an individual’s home, other than buildings or structures that may be set out in regulations by Ministers. Section 97C(4) enables Ministers to make regulations setting out descriptions or classes of buildings that are to be treated as an individual’s home for the purposes of section 97C(3)(a) and so the land on which these are on will not be eligible land.

*Reason for taking power*

110. An individual’s home can include a range of buildings with varying extents of land around it. This power will give Ministers flexibility to ensure that any buildings or structures which do constitute an individual’s home but which Ministers consider should be treated as if

they were such a home can be treated as such. These buildings or structures may need to be described in detail, and it is therefore appropriate for secondary legislation.

*Choice of procedure*

111. It is appropriate that this power is subject to affirmative procedure to allow Parliament a high level of scrutiny, given that what constitutes “eligible land” is fundamental to the scope and application of Part 3A.

**DEFINITION OF “COMMUNITY”**

**Section 48 – inserted section 97D(5)(a) of the 2003 Act – Power to set out the definition of a “community”**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

*Provision*

112. Section 97D sets out the requirements for a company limited by guarantee to be a Part 3A community body. One of the requirements is that the articles of association of the company define the community to which the company relates. Section 97D(5)(a) provides that a community is defined by reference to postcode unit or units or type of area set out in regulations. This provision allows Ministers to set out in regulations the areas that can be used to describe a “community”.

*Reason for taking this power*

113. Community bodies that have used the community right to buy provisions in Part 2 of the 2003 Act, together with stakeholders, such as Community Land Scotland, have commented that postcodes do not provide community bodies with the greatest flexibility in describing their “community”. In particular, some communities comprise a large number of postcodes which may also change frequently, making it cumbersome to use these to describe their “community”. There are a number of building blocks which could be used in addition to postcodes and postcode areas, including settlement areas and wards. To list these in the primary legislation would be cumbersome.

*Choice of procedure*

114. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The power does not define what amounts to a community in any particular case but sets out another method which may be used to define a particular community, such as settlement areas or wards. This is therefore essentially an administrative matter.

## **PROVISIONS SUPPLEMENTARY TO SECTION 97D**

### **Section 48 – inserted section 97E(4) of the 2003 Act – provision to make an order relating to matters connected with the acquisition of the land**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Affirmative procedure

#### *Provision*

115. Section 97E sets out circumstances in which the Scottish Ministers may compulsorily acquire land that has been purchased by a Part 3A community body under Part 3A of the 2003 Act. Section 97E(4) confers power on the Scottish Ministers to make provision by order in connection with the compulsory purchase of such land.

#### *Reason for taking this power*

116. There may be cases where the Scottish Ministers consider it appropriate to exercise their power to compulsorily acquire land under section 97E and further provision would be of assistance in setting out how this is to operate, by way of an order.

#### *Choice of procedure*

117. It is appropriate, that this power is subject to affirmative power, for Parliament to give a high level of scrutiny given that this power can be used to modify primary legislation.

## **REGISTER OF COMMUNITY INTERESTS IN ABANDONED OR NEGLECTED LAND**

### **Section 48 – inserted section 97F(6) – power to modify the information and documents that are to be contained in the Register of Community Interests in Abandoned or Neglected Land.**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

#### *Provision*

118. Section 97F requires the Keeper of the Registers of Scotland to set up and keep a Register of Community Interests in Abandoned or Neglected Land. Section 97F(2) sets out the information and documents that must be kept on the Register, including copies of applications made by Part 3A community bodies to exercise the right to buy under Part 3A. Section 97F(6)(a) enables the Scottish Ministers to make regulations modifying the information and documents that must be kept on the Register.

119. Section 97F(3) and (4) allows a Part 3A community body to require that information or documentation, which relates to the raising or expenditure of money to allow land to which the application relates to be used, should be withheld from public inspection. Such information or documentation will not be entered on the Register. However, section 97F(5) provides that Ministers cannot require a Part 3A community body to provide such information or

documentation. Section 97F(6)(b) and (c) allows the Scottish Ministers to make regulations modifying section 97F(3) and (4). Ministers require these powers to ensure that they can modify the information or documents relating to the raising or expenditure of money.

*Reasons for taking this power*

120. These powers are required to ensure that Ministers can vary the information and documents that are to be kept in the Register of Community Interests in Abandoned or Neglected Land. It is important that Ministers can respond to the need to make changes to the information that is contained in the Register.

*Choice of procedure*

121. These powers are subject to the affirmative procedure. It is considered that it is appropriate to allow the Scottish Parliament to give a high level of scrutiny as these regulations will be amending primary legislation.

**REGISTER OF COMMUNITY INTERESTS IN ABANDONED OR NEGLECTED LAND  
– PAYMENT OF CHARGES**

**Section 48 – inserted section 97F(7)(b) – Payment of charges for copies of entries in the Part 3A Register of Community Interests in Abandoned or Neglected Land**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

122. By virtue of section 97F(7) the Keeper of the Register of Community Interests in Abandoned or Neglected Land must ensure that members of the public are given facilities for obtaining copies of entries in the Register. Section 97F(7)(b) enables the Scottish Ministers to make regulations setting charges for such copies.

*Reason for taking this power*

123. The Keeper should be able to recover costs where they have provided members of the public with copies of entries in the Register of Community Interests in Abandoned or Neglected Land. This allows Ministers to keep charges under review.

*Choice of procedure*

124. It is appropriate that this power is subject to negative procedure because it will be used to set details of costs. This is essentially an administrative matter.

## **APPLICATION FORM FOR CONSENT TO A RIGHT TO BUY**

### **Section 48 – inserted section 97G(5)(a) – Power to prescribe the application form for Ministers to consent to a Part 3A community body’s right to buy**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

125. Section 97G(5)(a) provides that the application form that must be submitted to the Scottish Ministers by a Part 3A community body in order to exercise the right to buy under Part 3A is to be in the form set out in regulations made by the Scottish Ministers.

#### *Reason for taking this power*

126. A prescribed application form allows Ministers to set out information that they need to consider when making a decision. It also provides greater transparency in the assessment process and for the streamlining of information to be provided by a community body. It is considered that the level of procedural detail and detail required to be set out is more appropriately left to regulations.

#### *Choice of procedure*

127. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. This level of procedural detail is best dealt with through regulations. It also allows for flexibility in making changes to the application form where this is appropriate.

### **Section 48 – inserted section 97G(5)(c) – power to prescribe information in an application form for Ministers to consent to a Part 3A community body’s right to buy**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

128. Section 97G(5)(a) provides that the application form that must be submitted to the Scottish Ministers by a Part 3A community body in order to exercise the right to buy under Part 3A is to be in the form set out in regulations made by the Scottish Ministers.

#### *Reason for taking this power*

129. A prescribed application form allows Ministers to set out information that they need to consider when making a decision. It also provides greater transparency in the assessment process and for the streamlining of information to be provided by a community body. It is considered that the level of procedural detail and detail required to be set out is more appropriately left to regulations.

*Choice of procedure*

130. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. This level of procedural detail is best dealt with through regulations. It also allows for flexibility in making changes to the application form where this is appropriate.

**ADVERTISEMENT OF A PUBLIC NOTICE OF AN APPLICATION**

**Section 48 – inserted section 97G(12) – power to prescribe the manner in which an application under Part 3A is given public notice**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

131. Section 97G(12) enables the Scottish Ministers to make regulations setting out how an application to exercise the right to buy made under Part 3A is to be given public notice.

*Reason for taking this power*

132. This provision provides Ministers with flexibility in setting out how such an application is to be given public notice. This allows Ministers to take account of changing means of conveying technology, such as the use of electronic means and social media and developments with such technologies.

*Choice of procedure*

133. The setting out of how a public notice is to be given by advertisement is an administrative matter. It is considered that negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

**CONDUCT OF BALLOT TO INDICATE COMMUNITY SUPPORT OF PROPOSALS**

**Section 48 - inserted sections 97J(2) and (4) – powers to prescribe how the ballot of the community is undertaken and the form of the ballot return to Ministers**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

134. Section 97J(2) requires the Scottish Ministers to make regulations setting out how a ballot of the community is to be conducted. Such a ballot is undertaken in order to show whether a community has approved a proposal by a Part 3A community body to buy land. The regulations must include provision for certain matters including ascertaining the number of people who voted and the number of valid votes that were cast for and against the ballot question. Section

97J(4) gives Ministers power to set out how the ballot result and others details about the ballot are to be notified to Ministers.

*Reason for taking these powers*

135. The requirements that the ballot must comply with includes a number of detailed processes and steps. It is important that these are set out so that the ballot can be properly and fairly conducted. Detailed matters relating to the procedure to undertake a ballot are not considered appropriate to be included in primary legislation. It is important that the ballot results are notified in a standard format so that they are clear and there is no ambiguity. The reporting of these results is an administrative matter and is best dealt with in regulations.

*Choice of procedure*

136. It is considered that the use of this power can be left to the level of Parliamentary scrutiny attached to the negative procedure. The use of negative procedure is appropriate for such administrative procedural matters as the conduct of a ballot and the reporting of the results of that ballot.

## **MINISTERS' DECISION ON AN APPLICATION**

### **Section 48 – inserted section 97M(1) and (2) – Ministers' notification of their decision on an application under Part 3A**

**Powers conferred on:** Scottish Ministers  
**Powers exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

137. Section 97M(1) requires the Scottish Ministers to make regulations setting out the form for their decision as to whether to consent to an application to exercise the right to buy under Part 3A. Section 97M(2) requires the regulations setting out the form of notice to include certain information.

*Reason for taking these powers*

138. It is important that the Ministers' decision on an application is clearly set out and includes all the information that all parties involved in an application need to know as to how Ministers came to their decision. A written notice in a form set out in regulations ensures that the Scottish Ministers set out the same information in each case. As this information is of a detailed nature, it is appropriate that it is included in secondary legislation.

*Choice of procedure*

139. As the form of notice as to the Ministers' decision on an application made under section 97G and the particular information to be included in that notice is an administrative matter, it is considered that the negative procedure is appropriate for these powers.

## **EFFECT OF AN APPLICATION TO EXERCISE THE RIGHT TO BUY ON TRANSFERS OR DEALINGS IN LAND**

### **Section 48 – inserted section 97N(1) – effect of the Ministers’ decision on rights to buy**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

#### *Provision*

140. Section 97N(1) enables Ministers to make regulations setting out persons who are prohibited from undertaking certain transfers or dealings in respect of land which a Part 3A community body has made an application to buy under Part 3A. The regulations may include provisions as to the types of transfers or dealings which are not permitted, the persons who are not permitted to undertake these transfers or dealings and the period for which these transfers or dealings may not be undertaken.

#### *Reason for taking this power*

141. When a Part 3A application is received by Ministers it is important that the owner or certain creditors with a right to sell the land should not be able to sell the land until Ministers have made a decision on the application. This is so that the Ministers can properly undertake the administration of the provisions before coming to a decision on an application. However, there may be circumstances when it would be appropriate to allow the transfer of the land. To deal with this, Ministers require flexibility to set out the persons that are prohibited from undertaking certain transfers or dealings in relation to that land which is the subject to a Part 3A application and the consequences of this, such as provision that is to be made in the Register of Community Interests in Abandoned or Neglected Land.

#### *Choice of procedure*

142. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny to the detail of such a prohibition given that this will impact on how a land owner can deal with their land.

## **EFFECT OF AN APPLICATION EXERCISING THE RIGHT TO BUY ON RIGHTS IN OR OVER LAND**

### **Section 48 – inserted section 97N(3) – power to suspend the rights in or over land**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure

#### *Provision*

143. Section 97N(3) allows Ministers to make regulations suspending rights over land where a Part 3A community body has applied to exercise the right to buy in respect of that land. The

regulations may set out the rights which are to be suspended and the period for which the rights are to be suspended.

*Reason for taking this power*

144. The power may be used to make regulations providing that at a certain point in the application process for the right to buy, then certain rights of pre-emption, redemption or option to purchase are suspended until the transfer of the land is completed or it has been determined that the transfer is not to be completed. Ministers require flexibility to set out how these rights will be affected.

*Choice of procedure*

145. It is considered appropriate to allow the Scottish Parliament to give a high level of scrutiny given that the regulations will be capable of effecting existing rights in land.

## **COMPENSATION**

### **Section 48 – inserted section 97T(4) – power to make provision in relation to compensation**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

*Provision*

146. This power allows Ministers to make regulations setting out details in relation to the entitlement to compensation arising under section 97T(1) including amounts payable in respect of loss or expenditure, the person who is liable to pay these amounts, and how any compensation is to be claimed under this section.

*Reason for taking this power*

147. The provision needed for compensation will include a number of detailed matters. For example, the regulations will need to set out the evidence to be submitted to support the claim for compensation. It is important that these are clearly set out with the appropriate level of detail. Detailed matters relating to the payment and procedures and to apply for compensation are considered appropriate matters to be dealt in regulations.

*Choice of procedure*

148. Matters relating to the entitlement of compensation are likely to be detailed and administrative in nature and may require to be amended periodically. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of parliamentary time on the one hand and the nature of the content of the regulations on the other.

## **COMPENSATION – APPLICATION BY A PART 3A COMMUNITY BODY FOR A GRANT**

### **Section 48 – inserted section 97U(6) – power to make grants towards Part 3A community bodies’ liabilities to pay compensation**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulation  
**Parliamentary procedure:** Negative procedure

#### *Provision*

149. Under certain limited circumstances, a Part 3A community body can apply to the Scottish Ministers for a grant to assist it in meeting the compensation it has to pay in connection with its exercise of the right to buy. Section 97U(6) provides that Ministers can make regulations setting out the form of the application and the application procedure to be used.

#### *Reason for taking this power*

150. Making provision for an application form and application procedure for Part 3A community bodies seeking to apply for a grant to assist in connection with their right to buy will ensure that Ministers receive the information they need to deal with the application and providing an application procedure will ensure that applicants are informed of the process to submit an application. As this is an administrative matter it is best dealt with in regulations.

#### *Choice of procedure*

151. The matters to be detailed in regulations are details of procedure for a Part 3A community body applying for a grant from the Scottish Ministers to assist in meeting the compensation it has to pay in connection with its exercise of a right to buy and also the information that is to be specified in this application process. For example, the Ministers may make regulations setting out the application form to be used by the Part 3A community body or evidence that a Part 3A community body must provide in its application. As these matters are administrative ones, they are best dealt with by negative procedure.

## **APPEALS TO LANDS TRIBUNAL: VALUATION**

### **Section 48 – inserted section 97W(7) – Rules affected by Ministers in relation to the Lands Tribunal Act 1949**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Rules  
**Parliamentary procedure:** as provided for rules made under the Lands Tribunal Act 1949

#### *Provision*

152. Section 97W(1) provides that the owner of the land and the Part 3A community body exercising its right to buy may appeal to the Lands Tribunal against the valuation carried out under section 97S. Section 97W(7) provides that Ministers’ powers to make rules under the Lands Tribunal Act 1949 are extended to the extent that it is necessary to give full effect to

section 97W. For example, under section 3(6) of the Lands Tribunal Act 1949 rules can be made regulating proceedings before the Lands Tribunal. Rules under section 3(6) are not subject to any Parliamentary procedure. A similar provision is included in section 62(10) of the 2003 Act in relation to the community right to buy in Part 2 of the 2003 Act.

*Reasons for taking this power*

153. This power is needed to ensure that the Scottish Ministers have the same powers in relation to the Lands Tribunal's role under Part 3A as they do in relation to other aspects of the Lands Tribunal's role. This will ensure that section 97W operate effectively.

*Choice of procedure*

154. Ministers require flexibility to ensure that procedure for the Lands Tribunal in relation to Part 3A of the Act works effectively. This is an administrative matter and can be dealt with in the same way as rules under the Lands Tribunal Act 1949.

**Part 5 – Asset Transfer Requests**

**Section 50(2)(a) – Designation of a community transfer body**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

*Provision*

155. Section 50 defines a “community transfer body”. This is a community-controlled body (as defined in section 14), a body designated as a community transfer body by the Scottish Ministers or a body of a class of bodies designated as community transfer bodies. Community transfer bodies can make an asset transfer request to have rights in land held by relevant authorities transferred to them.

156. Subsection (2)(a) provides that the Scottish Ministers may by order designate individual bodies to be community transfer bodies.

*Reason for taking power*

157. Community bodies come in many different forms. The intention of the policy is that as wide a range of community bodies as possible should be able to act as a community transfer body and make an asset transfer request. It is important that community transfer bodies are open, inclusive and represent their community, and in most cases this should be demonstrated by meeting the criteria for a community-controlled body. However, there may be bodies which are established in a different way, especially those established before current approaches became standard, which Ministers still consider should be able to act as community transfer bodies. The power will allow the Scottish Ministers to designate additional community bodies for this purpose.

*Reason for choice of procedure*

158. The Scottish Government considers negative procedure is appropriate. The power will allow particular bodies of bodies to be a community-controlled body for the purposes of the Act. The nature of the power is that it may involve the addition, from time to time, of individual bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure

**Section 50(2)(b) – Designation of a class of bodies as community transfer bodies**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Order**  
**Parliamentary procedure: Negative procedure**

*Provision*

159. As stated, section 50 defines a “community transfer body”. This is either a community-controlled body (as defined in section 14), a body designated as a community transfer body or a body of a class of bodies designated as community transfer bodies.

160. Section 50(2)(b) provides that the Scottish Ministers may by order designate a class of bodies as community transfer bodies, so that any body of that type will qualify as a community transfer body.

*Reason for taking power*

161. As detailed above under section 50(2)(a), the intention of the policy is that as wide a range of community bodies as possible should be able to act as a community transfer body and make an asset transfer request, provided that they are open, inclusive and representative. If it appears that the characteristics of a type of body meet those requirements, the power will allow the Scottish Ministers to designate that class of bodies as community transfer bodies for this purpose.

*Reason for choice of procedure*

162. The Scottish Government considers negative procedure is appropriate. The nature of the power is that it may involve the addition, from time to time, of classes of bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure.

**Section 51(2) – Power to modify Schedule 3 relevant authorities**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Order**  
**Parliamentary procedure: Negative procedure**

*Provision*

163. Schedule 3, introduced by section 51, lists some of the persons to which an asset transfer request can be made (“relevant authorities”). Schedule 3 includes local authorities, the Scottish

Ministers, Health Boards, and other Scottish public bodies, which have been selected because they own significant amounts of land and buildings.

164. Subsection (2) gives the Scottish Ministers a power, by order, to remove or amend an entry on the list of relevant authorities in schedule 3.

*Reason for taking power*

165. Schedule 3 provides a list of persons to which an asset transfer request can be made. The bodies listed in schedule 3 may change over time and the power in subsection (2) is to provide flexibility in future should changes be required, either by removing a body from the list or making any necessary amendments to an entry.

*Reason for choice of procedure*

166. The power relates to modifications that may be required based on future changes to the bodies listed in schedule 3. It is therefore considered appropriate that the negative procedure be used. The power enables modifications, from time to time, of individual bodies and it is considered that this sort of modification is not of such significance as to require affirmative procedure and that negative procedure provides the appropriate balance required between scrutiny and the use of parliamentary resource.

**Section 51(3)(a) – Power to designate a relevant authority**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Negative procedure

*Provision*

167. In addition to the persons listed in schedule 3, under section 51(1)(b) and (3) a person designated as a community transfer body or of a class of bodies designated as community transfer bodies is also a relevant authority to whom an asset transfer request can be made.

168. Section 51(3)(a) gives the Scottish Ministers power to designate a relevant authority by order. Subsections (4) to (7) provide more detail on who may be designated as a relevant authority.

*Reason for taking power*

169. As stated above, the public bodies listed in schedule 3 have been selected because they own significant amounts of land and buildings. It may be appropriate to designate other public bodies that own land and buildings in future. Further, should new public bodies be created in future that own significant amounts of land and buildings, it may be considered appropriate to designate the public body as a relevant authority.

*Reason for choice of procedure*

170. The Scottish Government considers negative procedure is appropriate as it relates to the potential designation of relevant authorities to which an asset transfer request can be made in the future. It is not considered that the inclusion of particular bodies as a relevant authority is sufficiently significant to merit affirmative procedure and therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

**Section 51(3)(b) – Power to designate a class of relevant authorities**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Order**  
**Parliamentary procedure: Negative procedure**

*Provision*

171. In addition to the persons listed in schedule 3, under section 51(1)(b) and (3) a person designated as a community transfer body or of a class of bodies designated as community transfer bodies is also a relevant authority to whom an asset transfer request can be made.

172. Subsection (3)(b) provides that the Scottish Ministers may by Order designate a whole class of persons as community transfer bodies so that any person of that type will qualify as a relevant authority. Subsections (4) to (7) provide more detail on designating classes of persons.

*Reason for taking power*

173. As detailed above under section 51(3)(a), it may be appropriate to designate persons of a class of persons that own land and buildings in future as relevant authorities. It may be that a class of person should be treated as a relevant authority, and the power will allow the Scottish Ministers to designate that class of persons as relevant authorities for this purpose.

*Reason for choice of procedure*

174. The Scottish Government considers negative procedure is appropriate as it relates to the potential designation of a class of relevant authorities to which an asset transfer request can be made in the future. It is considered that nature of the provision is not sufficiently significant to merit affirmative procedure and therefore considered appropriate that the negative procedure be used to provide the balance required between scrutiny and the use of parliamentary resource.

**Section 54(1) – Power to make further provision about asset transfer requests**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

175. Section 54(1) gives the Scottish Ministers a power by regulations to make further provision about asset transfer requests.

176. Subsection (2) provides that the regulations can, in particular, specify how asset transfer requests are to be made, information to be included in them (in addition to that required under section 52(4)) and the procedure to be followed by a relevant authority in relation to requests. They may also include requirements to publish the fact that a request is being made, and to notify specified people about them.

*Reason for taking power*

177. The Scottish Government considers that section 54(1) and (2) is necessary to enable further detail to be provided on the asset transfer request process. It is appropriate for this to be done by regulations, due to the level of detail required and to allow the regulations to be amended from time to time to reflect the experience of both community transfer bodies and relevant authorities.

*Reason for choice of procedure*

178. Further provision that may be required regarding asset transfer requests and the process and procedure is a largely administrative matter and likely to be fairly detailed. The regulations may also need to evolve over time to reflect practical experience in the use of asset transfer requests. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 54(3) – Power to make provision about information relating to land in respect of which an asset transfer request is proposed**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

179. Section 54(3) provides that that the Scottish Ministers may make regulations in connection with enabling a community transfer body to request information from a relevant authority about land in respect of which it proposes to make an asset transfer request, how a relevant authority is to respond to the request for information, the circumstances in which the authority must provide the information, the type of information that the authority must provide and the circumstances in when the authority need not provide the information requested.

*Reason for taking power*

180. A community transfer body may need more information about the property before making an asset transfer request and determining such matters as the purchase price, maintenance costs, energy efficiency, level of rent or other terms and conditions to be proposed.

181. The Scottish Government considers that subsection (3) is necessary as further detail on the pre-transfer requirements and the process and procedure may be required. It may also be necessary from time to time to update the regulations to reflect the experience of both

community transfer bodies and relevant authorities and ensure that the procedure is as effective and efficient as possible.

*Reason for choice of procedure*

182. Provision that may be required regarding information about land which is the subject of a proposed asset transfer request is a largely administrative matter and likely to be fairly detailed. The regulations may also need to evolve over time to reflect practical experience in the use of asset transfer requests. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 55(8) – Power to prescribe a time for a decision notice to be given**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

183. Under section 55(2) a relevant authority must decide whether to agree to or refuse an asset transfer request. Subsection (3) sets out the matters to be taken into consideration when reaching a decision. Under subsection (7) the authority must within the period mentioned in subsection (8) give a decision notice. Under subsection (8) the period is a period prescribed by the Scottish Ministers or such longer period as may be agreed between the authority and the community transfer body.

*Reason for taking power*

184. The Bill provides the legislative framework around which decisions on asset transfer requests will be made and following enactment of the Bill the Scottish Government will consult on what is a reasonable time period for a decision to be made by relevant authorities. Once the Bill is enacted and in the light of experience and greater understanding a change to the time period may be deemed advisable and the power will allow that to be done straightforwardly.

*Reason for choice of procedure*

185. The period of time for a relevant authority to respond to an asset transfer request is an administrative matter and will be informed by a short and focussed consultation. It is also possible that the time period may change in future. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other..

**Section 55(9) – Power to make provisions regarding the information contained in a decision notice and the manner in which it is to be given**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

186. Under section 55(7) the relevant authority must give a decision notice to the community transfer body with its decision with regard to the asset transfer request and the reasons for it.

187. Section 55(9) gives the Scottish Ministers the power to make regulations with provision about information that a decision notice is to contain (in addition to the information required under Part 5) and also the manner in which a decision notice is to be given.

*Reason for taking power*

188. The power is to enable the development of the decision notice procedure. It will be important that the decision notice will contain relevant information and is given in an appropriate manner which is accessible to members of the community transfer body. Section 56(2) describes information to be contained within a decision notice that relates to a successful asset transfer request. However, as the detail of the decision notice procedure is developed it may be considered appropriate to include other information. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the information that a decision notice is to contain and also the manner in which a decision notice is to be given.

*Reason for choice of procedure*

189. The information that a decision notice is to contain and the manner in which a decision notice is given are administrative matters, and will change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 56(10) – Power to make provision about a direction to extend the period within which a contract is to be concluded**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

190. Section 56 sets out the procedure to be followed when an asset transfer request is agreed to. Subsection (5) provides that if a contract is not concluded within the period set out in subsection (7), the decision to agree to the request is of no effect. Under subsection (7) the period for concluding a contract is 6 months from the date of the offer or such longer period as agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the community transfer body may apply to the Scottish Ministers under subsection (8) for a direction that the period should be extended.

191. Subsection (10) gives the Scottish Ministers power to make regulations with provision about the form and procedure for making an application for a direction under subsection (8), the manner in which a direction is to be given and the information which a direction is to contain.

*Reason for taking power*

192. The power is to enable the development of the direction procedure. It will be important that the form and procedure for making an application is effective and efficient, that the direction contains relevant information and is given in an appropriate manner which is accessible to the relevant authority and the community transfer body. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the form and procedure for making an application, the information that a direction is to contain and also the manner in which a direction is to be given.

*Reason for choice of procedure*

193. The form and procedure for making an application, the information that a direction is to contain and also the manner in which a direction is to be given are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 58(3) – Power to prescribe asset transfer request appeal procedure, time limits and the manner in which appeals are to be conducted**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

194. Section 58 sets out the circumstances when a community transfer body can appeal in relation to an asset transfer request. The community transfer body can appeal to the Scottish Ministers, unless the relevant authority is the Scottish Ministers or a local authority.

195. Subsection (3) enables the Scottish Ministers by regulations to prescribe the appeal procedure, the manner in which appeals are to be conducted and the time limits within which appeals must be brought.

*Reason for taking power*

196. The power is to enable the development of the asset transfer request appeal process and procedure. It will be important that the process and procedure for appeals is transparent, effective and efficient. Further, from time to time in the light of practical experience and understanding the Scottish Ministers may wish to make changes to the process and procedure for appeals.

*Reason for choice of procedure*

197. The asset transfer appeal process and procedure are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

**Section 59(3) – Power to prescribe procedure, time limits and the manner in which local authority reviews of asset transfer requests are to be conducted**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

198. Under section 59(1), if a community transfer body has made an asset transfer request to a local authority and the authority has refused the request, agreed to it but attached material terms and conditions different to those in the request or has not given a decision notice the body can apply to the local authority to review the case and if an application is made the authority must carry out a review.

199. Subsection (3) enables the Scottish Ministers by regulations to prescribe the procedure to be followed in connection with reviews, the manner in which such reviews are to be carried out and the time limits within which applications for review must be made. Under subsection (4) the regulations may also provide that the manner in which a review, or any stage of a review, is to be carried out is at the discretion of the authority.

*Reason for taking power*

200. The power is to enable the development of the process and procedure for local authority reviews of asset transfer requests. It will be important that the process and procedure for reviews is transparent, effective and efficient. Further, from time to time and in the light of practical experience the Scottish Ministers may wish to make changes to the procedure for local authority reviews, for example, to highlight best practice and ensure consistency in procedure across Scotland.

*Reason for choice of procedure*

201. The process and procedure for asset transfer reviews by local authorities are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the order/regulations on the other.

**Part 7 – Allotments**

**Section 68(d) – Meaning of “allotment”**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

202. Section 68 defines “allotment” for the purpose of Part 7 of the Bill. The definition does not include size parameters and so land that meets the criteria set out in section 68(a) to (c) will be an allotment regardless of the size of the land. The power in section 68(d) will allow the

Scottish Ministers to make regulations setting out the size of land that is to constitute an allotment for the purposes of Part 7 of the Bill.

*Reason For Taking Power*

203. This power will enable Scottish Ministers to make provision on the specific size of an allotment should this be required. Currently, allotment sizes vary both within and between allotment sites. This variability is a reflection of individual tenants' needs and abilities to maintain and grow on an area. The Bill enables this variability to continue. Should there however, be a need to specify a prescriptive size for an allotment the Scottish Ministers have been provided with the relevant powers.

*Choice of Procedure*

204. It is not considered that detailed Parliamentary scrutiny is required for this provision since it will define the size an allotment should it be required. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

**Section 70(2)(c) – Request to lease allotment**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

205. A request to lease an allotment must be made in writing and include the name and address of the person making the request, information about the needs of a disabled applicant and such other information as the Scottish Ministers may set out in regulations.

206. Before making regulations the Scottish Ministers must consult each local authority and any other person appearing to the Scottish Ministers to have an interest.

*Reason For Taking Power*

207. This power will allow the Scottish Ministers flexibility to extend the information provided by any person making a request for an allotment should the need arise. For example, a situation may arise whereby there is great demand in a local area for allotments and a local authority may wish to know, within any request made, whether the applicants are already tenants on an allotment so that allotment provision may be prioritised.

*Choice of Procedure*

208. The negative procedure is considered appropriate because this is an administrative matter. Additionally, before the Scottish Ministers make regulations under this power section 70(6) of the Bill requires that local authorities and any other person, with an interest, has to be consulted and therefore it is considered unnecessary for further Parliamentary scrutiny.

## **Section 72(4) and (5) – Duty to provide allotments**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Order  
**Parliamentary procedure:** Affirmative procedure

### *Provision*

209. Section 72(1) provides that, where section 72(2) or (3) applies, a local authority must take reasonable steps to ensure the number of people on its waiting list for an allotment is no more than half the number of allotments owned and leased by the authority. Section 72(4) allows the Scottish Ministers to amend the proportion referred to section 72(1). Where a local authority already owns or leases allotments, the duty under section 72(1) is triggered as soon as there is one person on the waiting list. Where an authority does not own or lease allotments, the duty is triggered when there are 15 people on the waiting list. Section 72(5) provides the Scottish Ministers with power to amend the specified number of people recorded on a waiting list referred to in section 72(2) and (3) which triggers the duty.

### *Reason For Taking Powers*

210. Current legislation places a duty on local authorities to provide an allotment if there is an identified need. The consultation on the potential content of a Community Empowerment and Renewal Bill (September 2012) and stakeholder events highlighted that demand for allotments in Scotland is currently high and that the waiting times to gain an allotment are long.

211. These powers will enable the Scottish Ministers to vary the trigger point at which a local authority has to take reasonable steps to provide an allotment in response to changes in demand.

### *Choice of Procedure*

212. These powers are subject to the affirmative procedure allowing for detailed Parliamentary scrutiny. This is considered appropriate since these powers would result in amendment of primary legislation.

## **Section 73(1) – Allotment site regulations: additional provision**

**Power conferred on:** Local Authority  
**Power exercisable by:** Regulations  
**Parliamentary Procedure:** None

### *Provision*

213. Local authorities must make regulations about allotment sites in their area and these must be made before the expiry of the period of two years beginning with the date on which this section comes into force. This power allows for different provisions for different areas or types of allotment sites.

*Reason For Taking Power*

214. It is considered to be appropriate for local authorities to have power to make regulations for the allotment sites in its area. This will give local authorities flexibility to manage allotment sites as they consider fit. The power allows local authorities to make different provision for different areas or different types of allotment site as there is a wide variety of allotment site-types with respect to their layout and management.

*Choice of Procedure*

215. Since this provision is delegating powers to local authorities to regulate allotment sites in their local area it was viewed that Parliamentary scrutiny was not appropriate. Section 74 makes provision for the consultation that local authorities must undertake before making regulations under section 73(1) and provides that the regulation are executed by being signed by the proper officer of the local authority.

**Section 77(3)(d) – Duty to prepare food-growing strategy**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

216. Section 77(1) requires each local authority to prepare a food-growing strategy for its area. A food-growing strategy is a document that identifies land in the local authorities' areas that may be used for allotments and identifies other land that could be used by communities for growing vegetables, fruit, herbs or flowers, describing how the local authority intends to increase the provision in its area of allotments and containing such other information that may be set out in regulations. Section 77(3) makes further provision about the food-growing strategy and section 77(3)(d) allows the Scottish Ministers to make regulations setting out additional information that is to be included in a food-growing strategy.

*Reason For Taking Power*

217. This provision enables the Scottish Ministers to prescribe any additional information required for inclusion in a local authority food-growing strategy so enabling the 'type' of information to vary depending on what is considered to be appropriate at that time.

*Choice of Procedure*

218. This provision will result in additional information being required to be included in a local authority food-growing strategy and is likely to change over time in the light of experience and best practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

### **Section 79(2)(n) – Annual allotments report**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

219. Section 79 requires each local authority to prepare and publish an annual allotments report. Section 79(2) sets out the information to be included in an annual allotments report and section 79(2)(n) allows the Scottish Ministers to make regulations setting out additional information that is to be included within the annual report.

#### *Reason For Taking Power*

220. By enabling the Scottish Ministers to make regulations requiring additional information to be provided in an annual report this allows the reporting process to be more responsive to future information needs. For example, in the future it may be appropriate to require information about the number of organic allotment sites.

#### *Choice of Procedure*

221. This provision will result in additional information being required to be included in a local authority annual allotments report and is likely to change over time in the light of experience and best practice. It is therefore considered appropriate that the negative procedure is to be used so as to achieve the best balance of Parliamentary time and resource on the one hand and the nature of the content of the regulations on the other.

### **Section 80(7) – Power to remove unauthorised buildings from allotment sites**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

222. Section 80 makes provision enabling local authorities to remove unauthorised buildings from allotment sites in certain circumstances. Section 80(7) gives the Scottish Ministers power to make regulations making further provision as to the procedure to be applied in connection with the exercise of the powers of a local authority in section 80(2) to remove an unauthorised building from an allotment site.

#### *Reason For Taking Power*

223. The power allows flexibility when developing the detail of the procedure to remove an unauthorised building from an allotment site. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the

procedure. Detailed matters relating to procedure are not considered appropriate to be included in primary legislation.

#### *Choice of Procedure*

224. The procedure to remove an unauthorised building from an allotment site is an administrative matter and the regulations may also need to change over time to reflect practical experience. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

#### **Section 81(3)(b)(ii) – Delegation of management of allotment sites**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

#### *Provision*

225. Section 81(1) allows a person representing the interests of certain tenants on an allotment site to make a request to the local authority that owns or leases the allotment site that the local authority delegates certain functions relating to the allotment site to that person. Section 81(3) provides that the request must be made in writing and include the name and address of the person making the request. Section 81(3)(b)(ii) enables the Scottish Ministers to make regulations setting out other information that must be included in the request.

#### *Reason For Taking Power*

226. Allotments and allotment sites are managed in different ways both within and between local authorities and this variability is likely to continue in the future. Given this variability the power allows the Scottish Ministers to make regulations requiring further information about the person requesting to take over management of certain functions in relation to an allotment site should the need arise.

#### *Choice of Procedure*

227. The requirement for further information regarding the delegation of management of allotment sites is an administrative matter. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

#### **Section 83(10) – termination of lease of allotment or allotment site**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

#### *Provision*

228. Section 83(1) allows a local authority to terminate the whole or part of a lease of an allotment by giving written notice to the tenant. Section 83 sets out the process that a local

authority must comply with to terminate the lease and provides a tenant of an allotment with a right of appeal to the sheriff against the notice of termination. Section 83(10) enables Ministers to make regulations make further provision about the procedure to be applied when a local authority terminates a lease under section 83.

#### *Reason For Taking Power*

229. The power allows flexibility when developing the detail of the procedure that a local authority must comply with to terminate the lease and the level of detail that may be required is best set out in regulations. Further, from time to time in the light of practical experience and other developments the Scottish Ministers may wish to make changes to the procedure.

#### *Choice of Procedure*

230. The procedure that a local authority must comply with to terminate the lease under section 83 is an administrative matter and the regulations may also need to change over time to reflect practical experience. Negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations on the other.

### **Section 87(1) – Sale of surplus produce**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

231. Section 87(1) provides that a tenant of an allotment may only sell (other than with a view to making a profit) produce grown on the allotment if the produce falls within a description set out in regulations made by the Scottish Ministers.

#### *Reason For Taking Power*

232. During the consultation process this area was raised by stakeholders as an area of concern and it is now being addressed through the Bill. The power will provide Ministers with flexibility in setting out the description of produce grown on an allotment that may be sold, including the ability to respond swiftly if required.

#### *Choice of Procedure*

233. Before the Scottish Ministers make regulations under this power section 87(2) of the Bill requires that local authorities and any other person, with an interest, has to be consulted. Given this and the type of detail to be included in the regulations it is not considered that a more detailed level of parliamentary scrutiny is required and so the negative procedure is appropriate.

### **Section 89(4) – Compensation for disturbance**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

*Provision*

234. Section 89 makes provision for the payment by local authorities of compensation to tenants of allotments for disturbance in certain circumstances. Section 89(4) requires the Scottish Ministers to make regulations making further provisions in relation to the payment of compensation for disturbance. Section 89(6) requires the Scottish Ministers to consult each local authority and other interested persons before making the regulations.

*Reason For Taking Power*

235. This provision requires the Scottish Ministers to make provision about matters such as the determination of the amount of compensation and the process through which compensation would be claimed. This provision is likely to be fairly detailed and more suited to inclusion within regulations.

*Choice of Procedure*

236. Before the Scottish Ministers make regulations under this power section 89(6) of the Bill requires that local authorities and any other person, with an interest, has to be consulted. Given this and the type of detail to be included in the regulations it is not considered that a more detailed level of parliamentary scrutiny is required and so the negative procedure is appropriate.

**Section: 90(4) – Compensation for deterioration of allotment**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: Negative procedure**

*Provision*

237. Section 90 makes provision for tenants to be required to pay compensation for deterioration of an allotment to the landlord in certain circumstances. Section 90(4) requires Scottish Ministers to make regulations making further provision in connection with such compensation.

*Reason For Taking Power*

238. This provision requires Scottish Ministers to make regulations about matters such as the liability for and the determination of the amount of compensation. This provision is likely to be fairly detailed and more suited to inclusion within regulations.

*Choice of Procedure*

239. Since this provision requires the Scottish Ministers to consult each local authority and any other person with an interest before making regulations (section 90(6)) and the type of detail to be included in the regulations it is considered that detailed Parliamentary scrutiny is unnecessary and as such a negative procedure is considered appropriate.

### **Section: 91(3) – Compensation for loss of crops**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Negative procedure

#### *Provision*

240. Section 91 makes provision for the payment of compensation by a local authority to a tenant for loss of crops following resumption of the allotment in certain circumstances. Section 91(3) requires the Scottish Ministers to make regulations making further provisions in connection with such compensation.

#### *Reason For Taking Power*

241. This provision requires the Scottish Ministers to make regulations and this must include provision about the determination of the amount of compensation and the process through which compensation would be claimed. This provision is likely to be fairly detailed and more suited to inclusion within regulations.

#### *Choice of Procedure*

242. Given that this provision requires the Scottish Ministers to consult each local authority and any other person with an interest before making regulations (section 91(5)) and the type of detail to be included in the regulations it is considered that detailed Parliamentary scrutiny is unnecessary and the negative procedure is considered appropriate.

## **Part 9 - General**

### **Section 97(1) – Ancillary provision**

**Power conferred on:** Scottish Ministers  
**Power exercisable by:** Regulations  
**Parliamentary procedure:** Affirmative procedure – where regulations amend primary legislation. Negative procedure – where the regulations do not amend primary legislation

#### *Provision*

243. Section 97 confers on the Scottish Ministers a power to make incidental, supplementary, consequential, transitional or transitory provision or savings as they consider necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision of the Act or any provision made under it. Under subsection (2) an order under section 97 may modify any enactment (including the Act), instrument or document.

#### *Reason for taking power*

244. Any body of new law may give rise to a need for a range of ancillary provisions. Without the power to make incidental, supplementary and consequential provision it may be necessary to return to the Parliament, through subsequent primary legislation, to deal with minor matters

which require to be dealt with to give full effect to the original Bill. That would not be an effective use of either the Parliament's or the Government's resources. The power itself is circumscribed by being entirely ancillary to the provisions of the Bill and any such provision must be for the purposes of the Bill or in consequence of it or for giving full effect to it. It is appropriate for significant transitional, transitory or saving provision (as opposed to routine provision connected to commencement) to be subject to parliamentary procedure.

*Reason for choice of procedure*

245. Under section 96(2) any regulations made under section 97(1) will be subject to affirmative procedure if they contain provisions which make textual changes to an Act. Otherwise, they will be subject to negative procedure. This provides the appropriate level of parliamentary scrutiny for the textual amendment of primary legislation while ensuring that other ancillary provision is still subject to appropriate scrutiny by Parliament.

**Section 99 – Commencement**

**Power conferred on: Scottish Ministers**  
**Power exercisable by: Regulations**  
**Parliamentary procedure: No parliamentary procedure**

*Provision*

246. Section 99 provides that the provisions of the Bill (other than Part 9 which comes into force the day after Royal Assent) come into force on such day as the Scottish Ministers may by order appoint.

*Reason for taking power*

247. In a Bill of this nature which makes a number of improvements and reforms, the decision on when and to what extent the Bill is commenced is best determined by the Scottish Ministers, particularly as Ministers may wish (or find it appropriate) to commence provisions at different times. Transitional, transitory and saving provision may be made by a commencement order and the Scottish Government considers that those ancillary powers are required to ensure that, for example, pre-existing situations may be dealt with appropriately when Bill provisions are commenced.

*Reason for choice of procedure*

248. Section 99 has the effect that any such commencement order will not be subject to parliamentary procedure. This is typical of commencement powers and is justified having regard to the administrative nature of commencement of the Bill provisions which have been agreed to by the Scottish Parliament.

*This document relates to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014*

# **COMMUNITY EMPOWERMENT (SCOTLAND) BILL**

## **DELEGATED POWERS MEMORANDUM**