INTRODUCTION

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Community Empowerment (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended or inserted at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

2. The amended or new delegated powers provisions in the Bill are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

PART 1: NATIONAL OUTCOMES

Section 1(1) – Power to prescribe national outcomes

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: A form of “super-affirmative” procedure

Provision

3. Section 1(1) provides that the Scottish Ministers must by regulations prescribe outcomes (“national outcomes”) for Scotland. Amendments at Stage 2 altered section 1 to provide that the outcomes must be prescribed by regulations rather than determined by the Scottish Ministers.

Reason for taking power

4. The power to set national outcomes requires to be exercised from time to time to update the outcomes for Scotland. During discussions on the amendment in the Local Government and Regeneration Committee it was suggested that there should be a parliamentary mechanism for scrutiny regarding the national outcomes. The Bill also provides for consultation with the Scottish Parliament under Rule 17.5 of the Standing orders.
Choice of procedure

5. The Local Government and Regeneration Committee agreed both Government and non-Government amendments in relation to the procedure to be used. Consequently, the Bill now contains two separate procedures for setting and reviewing the national outcomes.

6. Section 1(2)(c) provides for the Scottish Parliament to be consulted (in accordance with rule 17.5 of the Standing Orders of the Parliament) on draft national outcomes for a 40 day period. New section 1A and section 96(5)(za) as inserted at Stage 2 provide additional procedure by applying a form of enhanced or “super-affirmative” procedure to the regulations which prescribe the national outcomes. The Scottish Government considers such duplication may be impractical. The Scottish Government’s preferred approach is to propose amendments to the procedure set out in Part 1 of the Bill at Stage 3 to provide for the national outcomes to be determined by the Scottish Ministers following consultation with appropriate persons including those representing the interests of communities and the Scottish Parliament.

PART 2 - COMMUNITY PLANNING

Section 4(6) power to modify schedule 1 community planning partners

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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 (6) enables the Scottish Ministers to amend the list of community planning partners in Schedule 1 by regulation. Subsection (7) 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 (6) 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 subsection (7).
Reason for choice of procedure

10. In the Bill as introduced, section 96 provided that regulations under section 4(6) were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96 was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to the list of bodies in Schedule 1 could have a significant impact on the application of the provisions of the Bill, and therefore affirmative procedure is more appropriate in this case.

Section 8(3) – Power to modify list of Community Planning Partners with a governance role

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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 the Scottish Ministers to modify by regulations 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 who 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. In the Bill as introduced, section 96 provided that regulations under section 8(3) were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96 was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to the list of bodies in section 8(2) could have a significant impact on the application of the provisions of the Bill, and therefore affirmative procedure is more appropriate in this case.
PART 3 – PARTICIPATION REQUESTS

Section 16(2) – Power to modify schedule 2 public service authorities
Section 16(3)(a) – Power to designate a public service authority
Section 16(3)(b) – Power to designate a class of public service authorities

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: Revised
Parliamentary procedure: Affirmative procedure

Provisions

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

16. Subsection (2) of section 16 enables the Scottish Ministers to remove or amend an entry on the list of public service authorities in schedule 2 by order.

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

18. Subsection (3)(a) of section 16 allows the Scottish Ministers to designate a public service authority by order. 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 (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

19. 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.

20. Once participation requests are in operation and their use and impact have been determined, it may also be appropriate to designate other public bodies that provide or support local services as public service authorities. 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. 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.
Choice of procedure

21. In the Bill as introduced, these powers were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96(2)(a) was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to bodies included on the list in Schedule 2 could have a significant impact on the application of the provisions of the Bill, and therefore affirmative procedure is more appropriate in this case.

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

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Provision

22. 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)).

23. Subsection (2) was amended at Stage 2 to add further examples of matters that the regulations may make provision for. These are ways in which public service authorities are to promote the use of participation requests, support that they are to make available to enable community participation bodies to make participation requests and participate in outcome improvement processes, and types of communities that may need additional support. In addition, provision was added to section 17 to allow a community participation body to request that one or more public service authorities other than the one to which the request is made should also participate in the outcome improvement process. Subsection (2)(ba) of section 18 was inserted to ensure that regulations may make provision for the procedure to be followed in such cases.

Reason for taking power

24. 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.

25. The reason for taking the power, as introduced, was to enable further information to be required in a request, and to make provision on the procedure for making requests and for handling them. Section 18(2), as amended at Stage 2, ensures that those provisions may include procedures for requests made under section 17(3A), and will allow the regulations also to require public service authorities to promote participation requests and to provide support to community participation bodies in making requests and participating in the outcome improvement process, including identifying types of communities that may particularly need support. This links with
the concerns expressed during Stage 1 that communities may need support to be able to take advantage of the provisions of the Bill.

Reason for choice of procedure

26. The choice of procedure is unchanged. The regulations will be subject to negative procedure, for the reasons given in the original Delegated Powers Memorandum.

Section 24A(3) – Power to prescribe participation request appeal procedure, time limits and the manner in which appeals are to be conducted

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Provision

27. Section 24A was inserted at Stage 2 and sets out the circumstances when a community participation body can appeal to the Scottish Ministers in relation to a participation request.

28. 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

29. The power is parallel to that relating to asset transfer requests in section 58. It allows for transparent, effective and efficient appeals procedures to be developed and set out in detail, and to be amended from time to time in the light of practical experience.

Reason for choice of procedure

30. The power is subject to negative procedure. The appeal process and procedure are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure is 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 LAND

TYPES OF PUBLIC NOTICE FOR APPLICATIONS TO REGISTER AN INTEREST IN SALMON FISHINGS AND CERTAIN MINERAL RIGHTS

Section 29A(b) – inserted section 37(4A) of the 2003 Act - Public Notice of Certain Applications

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

31. Section 29A inserts new subsection (4A) into section 37 of the Land Reform (Scotland) Act 2003. Subsection (4A) confers a power on the Scottish Ministers to make regulations setting out how an application to register an interest under Part 2 of that Act is to be given by public notice where that interest is in salmon fishings or mineral rights which are owned separately from the land in respect of which they are eligible.

Reason for taking power

32. Currently, section 37(3) of the Land Reform (Scotland) Act 2003 requires that in cases where the owner or creditor is unknown or cannot be found, the Scottish Ministers are relieved of their duties under subsections (5) to (10), and paragraphs (b) and (c) of subsection (17), of section 37. However, section 37(4) provides that they cannot be satisfied that the owner or creditor is unknown or cannot found unless the community body has placed an advertisement in a local newspaper in two consecutive weeks and affixed a conspicuous notice, in a form as prescribed by the Scottish Ministers, to a part of the land.

33. The Rural Affairs, Climate Change and Environment Committee questioned in their Stage 1 Report (paragraph 188 of Annexe A, page 132) whether this requirement should be relaxed for cases where the right to buy was being exercised in relation to separate tenements. The relevant separate tenements in this case are salmon fishings and mineral rights (except rights to oil, coal, gas, gold or silver). In practical terms, it is simply not possible to affix a physical notice to a salmon fishing or mineral right.

34. However, it is still desirable that the owner or creditor, who is unknown at this point in time, should have an opportunity to see some sort of notice of the community right to buy application, and make themselves known to that community body.

35. It was considered that the best way to address this was to widen the options for such a notice to be placed in a manner which would give the best opportunity for it to be seen, which would vary depending on the separate tenement in question.
Choice of procedure

36. The setting out of how a public notice is to be given is an administrative matter. It is considered that the 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.

COMMUNITY APPROVAL OF APPLICATION TO REGISTER AN INTEREST IN LAND

Section 30(b) – inserted section 38(2B) of the 2003 Act – Period for Indicating Approval under section 38 of the Land Reform (Scotland) Act 2003

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Provision

37. The Bill as introduced included a requirement that a community body must indicate that it has the approval of the community when making an application to register an interest in land under Part 2 of the Land Reform (Scotland) Act 2003, and that such approval must be within 6 months of the application being made. This requirement is set out in section 38(2A) of the Act.

38. Section 30(b) of the Bill inserts subsection (2B) into section 38 of the Land Reform (Scotland) Act 2003. This subsection gives the Scottish Ministers a power to make regulations to substitute the time limit in section 38(2A) with a different period of time. This would apply for all cases and not on a case by case basis.

Reason for taking power

39. In its Stage 1 report the Rural Affairs, Climate Change and Environment Committee commented at paragraph 140 of Annexe A that there may be “practical issues for communities in considering an interest in land and agrees that the Scottish Ministers should not be artificially restricted by a six-month time limit in considering any relevant material”.

40. Whilst the Scottish Government were not aware of any situations where a community body has been unable to demonstrate support within the previous 6 months of an application, that did not mean that there would not be an issue in the future, given that the right to buy is being extended into urban areas, which could have more complex and fluid communities.

41. As a result, it was believed that giving the Scottish Ministers the option to review and amend this time limit as the body of new casework develops, would be prudent.

Choice of procedure

42. Section 98(5) of the Land Reform (Scotland) Act 2003 is amended by paragraph 2(5) of schedule 4 to the Bill so as to make the regulations under section 38(2B) subject to the
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2 (SP Bill 52A - Revised)

affirmative procedure. It is appropriate that this power is subject to the affirmative procedure because it amends primary legislation.

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

Section 47A(2) – inserted section 71(A1)(b) of the 2003 Act – power to prescribe bodies that are “crofting community bodies” and prescribed requirements

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**Provision**

43. Section 47A includes a number of provisions relating to the type of body that can be a crofting community body for the purposes of the crofting community right to buy in Part 3 of the Land Reform (Scotland) Act 2003. The existing provisions of section 71 of the Act state that a crofting community body must be a company limited by guarantee. Section 47A(4) of the Bill inserts subsections (1A) and (1B) into section 71 of the Act, extending the types of body that can be crofting community bodies (provided they fulfil the criteria set out in those subsections) to Scottish Charitable Incorporate Organisations (SCIOs) and Community Benefit Societies (BenComs).

44. Section 47A(2) inserts subsection (A1)(b) into section 71 of the Act which gives the Scottish Ministers the power to make regulations which add to the types of body that can be a crofting community body for the purposes of exercising the crofting community right to buy. It also gives the Scottish Ministers the power to make regulations setting out the requirements that such a body must satisfy in order to be a crofting community body.

**Reason for taking power**

45. At Stage 2 of the Bill amendments were made to Part 3 of the Land Reform (Scotland) Act 2003, which provides for the Crofting Community Right to Buy. The amendments made by section 47A reflect similar changes in relation to Part 2 of the 2003 Act, and the powers inserted by section 47A(2) ensure consistency with the community right to buy for neglected and abandoned land.

46. Since the 2003 Act came into operation, new legal structures have been developed which enable communities 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 crofting community bodies for the purpose of Part 3 of the 2003 Act. Being able to make regulations providing for such bodies to be crofting community bodies would allow Ministers to be able to respond quickly to such developments.
Choice of procedure

47. 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 crofting community bodies for the purposes of the 2003 Act. Any extension to the types of bodies that may be a crofting community body may have a significant impact on who can make use of the crofting community right to buy in Part 3 of the 2003 Act. Use of this power could have a significant impact on the scope of the legislation and so the affirmative procedure is appropriate.

REQUIREMENTS OF A CROFTING COMMUNITY BODY

Section 47A(6) – inserted sections 71(4A) and (4B) of the 2003 Act – power to make regulations to amend the requirements for a body to be a crofting community body.

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Provision

48. Section 47A(6) of the Bill inserts subsection (4A) into section 71 of the Land Reform (Scotland) Act 2003 (“2003 Act”) which gives the Scottish Ministers the power to make regulations modifying the criteria which must be met by companies limited by guarantee, SCIOs and BenComs to be crofting community bodies under Part 3 of the Act.

49. Section 47A(6) also inserts subsection (4B) into section 71 of the 2003 Act which provides that if the Scottish Ministers make regulations under section 71(A1)(b) they can also make regulations to amend section 72(1). Section 72(1) is the provision which (as amended by the Bill at Stage 2) prohibits crofting community bodies that have bought land under Part 3 from making changes to their memorandum, articles of association, constitution or registered rules without the Scottish Ministers’ consent in writing.

Reason for taking power

50. At Stage 2, amendments were made to Part 3 of 2003 Act, including new legal structures which a community body may use when forming a crofting community body. The power will allow the Scottish Ministers to amend what kind of legal entity can be used to form a crofting community body. This will enable the Scottish Ministers to respond quickly if it should become apparent that other types of bodies are suitable for use by communities for the purposes of Part 3 of the 2003 Act. The power will also allow the Scottish Ministers to amend section 72(1) of the 2003 Act so that it refers to all relevant types of constitutional documents of any legal entity that is added to the list of entities that a crofting community body can be composed of.

Choice of procedure

51. 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 sections 71(4A) and (4B)
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2
(SP Bill 52A - Revised)

of the 2003 Act will amend primary legislation and therefore the affirmative procedure is
appropriate.

DEFINITION OF "CROFTING COMMUNITY"

Section 47A(7)(b)(ii) – inserted section 71(5)(a)(iv) of the 2003 Act – definition of crofting
community

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

52. Section 47A(7)(b)(ii) of the Bill inserts section 71(5)(a)(iv) into the Land Reform
(Scotland) Act 2003 which gives the Scottish Ministers the power to specify what other persons
or classes of persons will be included within the definition of a crofting community.

Reason for taking power

53. At Stage 2 amendments were made to the Bill to amend the definition of a crofting
community. The additional power will enable the Scottish Ministers to extend the definition of a
crofting community at a later date. This power could be used to include owner-occupiers who are
registered in the Register of Crofts, but this could not be done until legislative changes are made
to the requirements of the Crofting Commission in relation to including owner-occupiers on that
Register.

Choice of procedure

54. It is considered that 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, and has been included as a means to allow Ministers to broaden the
definition of community and make it more inclusive following any future amendments of other,
related legislation.
POWERS OF COMPULSORY PURCHASE WHERE CROFTING COMMUNITY BODY HAS MODIFIED CONSTITUTIONAL DOCUMENTS

Section 47B – inserted section 72(4) of the 2003 Act- Modification of Memorandum, Articles of Association, Constitution or Registered Rules

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: New
Parliamentary procedure: Affirmative procedure

Provision

55. Section 72(2) allows the Scottish Ministers to acquire land owned by a crofting community body compulsorily if they are satisfied that the crofting community body which has bought the land, if it had not done so, would no longer be entitled to do so. Section 72(4) as inserted by the Bill at Stage 2 gives the Scottish Ministers the power to make an order relating to, or to matters connected with, the purchase of land under section 72(2). Section 72(5) states that such an order may (a) apply, modify or exclude any enactment which relates to any matter as to which an order could be made and (b) make such modifications or enactments as appear necessary or expedient in consequence of any provision of such an order or otherwise in connection with the order.

Reason for taking power

56. There may be cases where the Scottish Ministers consider it appropriate to exercise their power to compulsorily acquire land under section 72(4) and further provision would be of assistance in setting out how this is to operate, by way of an order. This order making power is similar to the power in section 97E(4) of the 2003 Act (relating to the right to buy abandoned and neglected land) which was inserted into the 2003 Act by the Bill at introduction.

Choice of procedure

57. Orders made under section 72(4) of the Land Reform (Scotland) Act 2003 will be able to modify primary legislation. Such orders will therefore be subject to the affirmative procedure to allow the Scottish Parliament to give them a high level of scrutiny.
APPLICATION FORM – RIGHTS AND INTERESTS IN LAND

Section 47C(2) – amended section 73(5) of the 2003 Act - change to powers of Ministers to prescribe application form

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58. Section 73(5) of the 2003 Act gives the Scottish Ministers the power to set out in regulations the form of the application and what kind of information must be contained within applications to exercise the crofting community right to buy. Section 47C of the Bill amends section 73 of the 2003 Act by inserting new subsection (5ZA) which specifies the persons who must be identified in the crofting community body’s application. Those persons are the owner of the land, any creditor in a standard security with a right to sell the land, the tenant of the land, and the person entitled to any sporting interests.

59. Section 47C also amends section 73(5)(b) so that crofting community bodies, as a minimum, must include information in the application form of all rights and interests in the land known to them.

Reason for taking power

60. The amendment to the minimum type of information that must be included in the application form as set out in regulations by the Scottish Ministers will ensure that Ministers have all available information with which to make a decision on the application.

Choice of procedure

61. Regulations made under section 47C(2) are subject to the negative procedure as this will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations, which is to simplify and clarify the application process, and will be mostly administrative and subject to amendment from time to time, on the other.
PUBLIC NOTICE OF APPLICATIONS MADE UNDER THE CROFTING COMMUNITY RIGHT TO BUY

Section 47C(4) – amended section 73(11) of the 2003 Act – Application: Information about Rights and Interest in Land

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

62. At Stage 2, an amendment was made to the Bill which removes the requirement that the Scottish Ministers should give public notice of an application under Part 3 of the 2003 Act by either a newspaper circulating in the area where the subjects of the application are situated as Ministers think appropriate or in the Edinburgh Gazette and replaces it with a power for the Scottish Ministers to make regulations setting out the manner of giving public notice.

Reason for taking power

63. During stakeholder evidence sessions, it became clear that, particularly in more rural areas, which most of the crofting areas are, the Edinburgh Gazette is largely unheard of. In addition, the circulation of newspapers is not a reliable method of ensuring that notices of this type are widely available.

64. It was believed that additional methods of ensuring that as many people as possible are able to read these public notices, would be the best way to deal with these issues, and that those methods may vary quite widely according to area.

65. As such, giving the Scottish Ministers the ability to amend these more readily was considered to be an appropriate solution. The power will allow the Scottish Ministers to ensure that the procedure under Part 3 of the 2003 Act can be quickly updated to allow crofting community bodies to use the most effective and up-to-date methods of advertising their application to the public, and to ensure that the most effective communication methods are available to crofting communities.

Choice of procedure

66. Using the negative procedure will achieve the best balance between use of Parliamentary time and resource on the one hand and the purpose of the regulations, as these will be mostly administrative, on the other.
RECOVERY OF BALLOT EXPENSES BY A CROFTING COMMUNITY BODY

Section 47E – inserted section 75(6) of the 2003 Act - Ballot: Information and Expenses

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

67. Section 47E(3) inserts sections 75(6) and (7) into the 2003 Act. Section 75(6) gives the Scottish Ministers the power to make regulations which make provision for or in connection with enabling a crofting community body, in such circumstances as may be specified in the regulations, to apply to the Scottish Ministers to seek reimbursement of the expense of conducting a ballot under section 75. Section 75(7) sets out particular things which the regulations can cover, being (a) the circumstances under which a community body may apply, (b) the method used to calculate any such expenses, (c) the criteria used to determine whether an application for expenses is successful, (d) the procedure for both an application and an appeal to the Scottish Ministers in relation to the ballot costs, (e) the persons who would consider such an appeal and (f) the powers of such persons.

Reason for taking power

68. Section 37 of the Bill provides that a ballotter would be appointed by the Scottish Ministers, and the expenses of the ballot would be met, for any applications under Part 2 of the Land Reform (Scotland) Act 2003.

69. There was no such element for Part 3 of the 2003 Act and stakeholder submissions to the RACCE committee considered that this was an omission.

70. The process for applications for the crofting community right to buy under Part 3 of the 2003 Act is different from the process for applications under Part 2. In a Part 3 application, the ballot is held before the Scottish Ministers receive the application, and therefore, is the first indication of community support for the application. In an application to register an interest under Part 2, on the other hand, community support is demonstrated via the likes of a petition, and the ballot is only held once the community had confirmed that it wishes to proceed with the actual purchase.

71. For this reason, it was believed a ballot under Part 3 of the 2003 Act should not be run, or the expenses met, by the Scottish Ministers with no information about or indication of community support.

72. However, it was recognised that there was an imbalance between applications in Parts 2 and 3 in this respect and it was agreed that there would be circumstances under which the Scottish Ministers would be prepared to meet the expense of a ballot under Part 3 of the 2003 Act.
73. These powers are added to allow the Scottish Ministers to make regulations setting out those circumstances and the process which crofting community bodies will use to apply for those expenses. As this is a new area of policy we have not yet consulted with stakeholders on what would be the appropriate circumstances in which a community body might seek reimbursement of ballot expenses so it sits best in regulations rather than on the face of the Bill.

**Choice of procedure**

74. Regulations made under the new section 75(6) are likely to be administrative in nature and may require to be amended periodically so it is thought that the 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.

**COMPENSATION PROCEDURE UNDER CROFTING COMMUNITY RIGHT TO BUY**

**Section 47I – inserted section 89(4) of the 2003 Act - Compensation**

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<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
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**Provision**

75. Section 47I inserts section 89(4) into the Land Reform (Scotland) 2003 Act, giving the Scottish Ministers the power to, by order, make provision for or in connection with specifying the amounts payable in respect of loss or expense incurred as mentioned in section 89(1) of the 2003 Act.

76. It also gives the Scottish Ministers the power to, by order, make provision for or in connection with specifying the amounts payable in respect of loss or expense incurred by virtue of Part 3 by a person of such other description as may be specified.

77. It will allow the Scottish Ministers to make provision for specifying the person liable to pay those amounts and the procedure under which claims for compensation under this section can be made.

78. These powers are in line with those in section 97T(4) of the 2003 as inserted by section 48 of the Bill.

**Reason for taking power**

79. These powers bring Part 3 of the Land Reform (Scotland) Act 2003 into line with the new Part 3A of the 2003 Act (inserted by section 48 of the Bill), which was added through section 48 of the Bill as introduced, and will ensure that the procedure and circumstances of any claims for compensation are transparent and fair to all parties.
Choice of procedure

80. 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 used so as to achieve the best balance of parliamentary time on the one hand and the nature of the content of the order on the other.

ELIGIBLE LAND - HOMES

Section 48 – amended section 97C(4) of the 2003 Act – Eligible Land and a person’s home

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Provision

81. Section 97C(3)(a) of the Bill as introduced, gave the Scottish Ministers the power to prescribe classes of buildings or structures which were to be excluded from those that were an individual’s home under section 97C(3)(a).

82. Section 97C(4) allowed the Scottish Ministers the power to prescribe classes of building or structure that are to be treated as an individual’s home for the purposes of section 97C(3)(a).

83. The Bill as amended at Stage 2 now no longer includes the power to prescribe the classes of buildings or structures which were to be excluded from those that were an individual’s home under section 97C(3)(a).

84. Instead, there is an amendment to section 97C(4) which allows the Scottish Ministers to make regulations setting out what description or classes of building or structure are to be an individual’s home for the purposes of section 97C(3)(a), as well as those that are to be treated as an individual’s home even if they are not.

Reason for taking power

85. The Delegated Powers and Law Reform Committee, in their evidence session last September, and also in paragraph 66 of their report, queried the requirement for the power to exclude classes of buildings from the exclusion from the definition “eligible land” of an individual’s home. It is considered more appropriate for the Scottish Ministers to set out in regulations what types of buildings or structures are an individual’s home for the purposes of the exclusion in section 97C(3)(a). This will provide clarity about which land is excluded from the right to buy under Part 3A.

Choice of procedure

86. Regulations made under section 97C(4) are subject to the affirmative procedure as they will directly affect the land which is excluded from eligible land under the new Part 3A of the
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2
(SP Bill 52A - Revised)

2003 Act which gives communities a right to buy neglected or abandoned land. As such, they should be subject to the affirmative procedure.

**Bodies that may comprise a “Part 3A community body” for the purposes of the right to buy land which is wholly or mainly abandoned or neglected**

Section 48 – inserted section 97D(1)(b) of the 2003 Act – Part 3A Community Bodies

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**Provision**

87. Section 48 includes a number of provisions relating to the type of body that can be a Part 3A community body for the purposes of exercising the right to buy abandoned or neglected land under the new Part 3A of the Land Reform (Scotland) Act 2003, as inserted by the Bill. The provisions of section 97D as introduced stated that a Part 3A community body must be a company limited by guarantee. The Bill as amended at Stage 2 now inserts Scottish Charitable Incorporate Organisations (SCIOs) and Community Benefit Societies (BenComs) as types of bodies that communities may use to form a Part 3A community body (provided they meet certain criteria).

88. The new section 97D(1)(b) gives the Scottish Ministers the power to make regulations which add to the types of body that a Part 3A community body can be for the purposes of exercising the right to buy abandoned or neglected land. It also gives the Scottish Ministers the power to make regulations setting out the requirements that such a body must satisfy in order to be a Part 3A community body.

**Reason for taking power**

89. The Bill introduced a new Part 3A of the Land Reform (Scotland) Act 2003, the community right to buy neglected or abandoned land. The changes in section 97D reflect similar changes which were made during Stage 2 in relation to Part 2 of the 2003 Act, and were added to ensure consistency across the various Parts of the 2003 Act.

90. Since the 2003 Act came into operation, new legal structures have been developed which enable communities 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 part 3A community bodies for the purposes of Part 3A of the 2003 Act. Being able to make regulations providing for such bodies to be crofting community bodies would allow Ministers to be able to respond quickly to such developments.

**Choice of procedure**

91. Currently, this power is subject to the negative procedure. However, equivalent provisions in Parts 2 and 3 of the 2003 Act are subject to the affirmative procedure. The
particular provisions are sections 34(A1)(b) and 71(A1)(b) of the 2003 Act, inserted respectively by sections 28(2) and 47A(2) of the Bill. There will, therefore, be consideration given to amending the Bill at Stage 3 to make this power subject to the affirmative procedure in alignment with Parts 2 and 3.

REQUIREMENTS FOR A PART 3A COMMUNITY BODY

Section 48 – inserted sections 97D(4A) and (4B) of the 2003 Act – power to make regulations to amend the requirements for a body to be a Part 3A community body.

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Provision

92. Section 48 of the Bill inserts section 97D of the Land Reform (Scotland) Act 2003. Subsection (4A) of section 97D gives the Scottish Ministers the power to make regulations modifying the criteria which must be met by companies limited by guarantee, SCIOs and BenComs to be Part 3A community bodies under Part 3A of the Act.

93. Subsection (4B) of section 97D provides that if the Scottish Ministers make regulations under section 97D(1)(b) they can also make regulations to amend section 97E(1) as they consider necessary or expedient. Section 97E(1) is the provision which prohibits Part 3A community bodies that have bought land under Part 3A from making changes to their memorandum, articles of association, constitution or registered rules without the Scottish Ministers’ consent in writing.

Reason for taking power

94. The power will allow the Scottish Ministers to amend what kind of legal entity can be used to form a Part 3A community body, and will enable Ministers to respond quickly if it should become apparent that other types of bodies are suitable for use by communities for the purposes of part 3A of the 2003 Act. For example, Community Benefit Companies (BenComs), have only recently been introduced in the Co-operative and Community Benefit Societies Act 2014. It could well be the case that others will follow. The power will also allow the Scottish Ministers to amend the provision to refer to the constitutional documents of any legal entity that is added to the list of entities that a Part 3A community body can be.

Choice of procedure

95. 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 sections 97D(4A) and (4B) of the 2003 Act will amend primary legislation and therefore the affirmative procedure is appropriate.
APPLICATION FORM – RIGHTS AND INTERESTS KNOWN TO THE PART 3A COMMUNITY BODY

Section 48 – amended section 97G(5) of the 2003 Act – application form to include rights and interests known to the Part 3A community body

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Negative procedure

Provision

96. Section 97G(5) of the 2003 Act, as inserted by the Bill, gives the Scottish Ministers the power to set out in regulations the form that an application must take and what kind or information must be contained within the application to exercise the community right to buy. Section 97G(6) sets out the types of information which must be included in that application form. Section 97G(6) of the 2003 Act, as inserted by the Bill as introduced, provided that the information on application forms must include all rights and interests in the land, and sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land known to the community body or the existence of which it is, on reasonably diligent inquiry, capable of ascertaining. This has been amended at Stage 2 of the Bill, so that the application form as prescribed by the Scottish Ministers must include as a minimum all rights and interests in the land known to the community body.

Reason for taking power

97. Over the previous 10 years of the Act, there had been numerous stakeholder comments to the effect that the mapping requirements were far too complex and excessive. The amendment to the minimum types of information that must be included in the application form as set out in regulations by the Scottish Ministers will ensure that Ministers have all available information with which to make a decision on the application while balancing the need to ensure that community bodies are not subject to overly onerous requirements.

Choice of procedure

98. Regulations made under section 97G(5) are subject to the negative procedure as they are seen as largely administrative and could be subject to periodic changes which reflect stakeholder experiences, this 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.
RECOVERY OF BALLOT EXPENSES BY A PART 3A COMMUNITY BODY

Section 48 – inserted section 97J of the 2003 Act – Ballot to indicate approval for the purposes of section 97H

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

99. Section 48 inserts section 97J(6A) which gives the Scottish Ministers the power to make regulations which make provision for or in connection with enabling a Part 3A community body, in such circumstances as may be specified in the regulations, to apply to the Scottish Ministers to seek reimbursement of the expense of conducting a ballot under section 97J.

100. Inserted section 97J(6B) sets out particular things which the regulations can cover, being (a) the circumstances under which a Part 3A community body may apply, (b) the method used to calculate any such expenses, (c) the criteria used to determine whether an application for expenses is successful, (d) the procedure for both an application and an appeal to the Scottish Ministers in relation to the ballot costs, (e) the persons who would consider such an appeal and (f) the powers of such persons.

Reason for taking power

101. Section 37 of the Bill as introduced states that a ballotter would be appointed by the Scottish Ministers, and the expenses of the ballot would be met, for any applications under Part 2 of the Land Reform (Scotland) Act 2003.

102. There was no such element for Part 3A of the 2003 Act and stakeholder submissions to the RACCE committee considered that this was an omission.

103. The process for applications under Part 3A of the 2003 Act are different from those under Part 2. In a Part 3A application, the ballot is held before the Scottish Ministers receive the application and therefore is the first indication of community support for the application. In an application to register an interest under Part 2, however, this support is demonstrated via the likes of a petition and the ballot is only held once the community had confirmed that it wishes to proceed with the actual purchase.

104. For this reason, it was believed that a ballot under Part 3A of the 2003 Act should not be run, or the expenses met, by the Scottish Ministers with no information or indication of community support.

105. However, it was recognised that there was an imbalance between applications in Parts 2 and 3A in this respect and it was agreed that there would be circumstances under which the Scottish Ministers would be prepared to meet the expense of a ballot under Part 3A of the 2003 Act.
This document relates to the Community Empowerment (Scotland) Bill as amended at Stage 2
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106. These powers are added to allow the Scottish Ministers to lay out those circumstances and the process which community bodies may apply for those expenses.

Choice of procedure

107. Regulations made under section 97J(6A) are subject to the negative procedure as they are seen as largely administrative and subject to amendments as new circumstances arise through an increased use of the provisions, and it is considered that this 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.

EFFECT OF AN APPLICATION TO EXERCISE THE RIGHT TO BUY ON TRANSFERS OR DEALINGS OVER LAND

Section 48 – amended section 97N(1) of the 2003 Act – effect of the Ministers’ decision on rights to buy land

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Affirmative procedure

Provision

108. Section 97N enables the Scottish 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.

109. 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.

110. Section 48 of the Bill was amended at Stage 2 to amend the wording of the regulation-making powers in section 97N(1), which gives the Scottish Ministers a power to specify the persons, and specify the period of time for which those persons would be prohibited from transferring or otherwise dealing with land which is the subject of a Part 3A application.

111. The amendments made to section 97N(1) address the Delegated Powers and Law Reform Committee’s concerns regarding the wording of the provisions in section 97N, and the over-use of “prescribed” and its meaning, and seek to clarify the nature of the regulation-making powers set out in that section.

Choice of procedure

112. 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 – amended section 97N(3) of the 2003 Act – Effect of Ministers’ decision on right to buy land

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Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Affirmative procedure

113. Section 97N(3) allows the Scottish 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.

114. Section 48 of the Bill was amended at Stage 2 to amend the wording of the regulation-making powers in section 97N(3), which gives the Scottish Ministers a power to specify in regulations the period of time for which a person’s rights in or over land which is the subject of a Part 3A application are suspended.

Reason for taking power

115. The reason for this amendment to section 97N(3) is to address the Delegated Powers and Law Reform Committee’s concerns regarding the wording of the provisions in section 97N, and the over-use of “prescribed” and its meaning, and seeks to clarify the nature of the regulation-making powers set out in that section.

Choice of procedure

116. 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.

Schedule 4 – amended section 98(5) - section 34(4B) subject to the affirmative procedure

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Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: Revised
Parliamentary procedure: Affirmative procedure

117. Section 34(A1)(b) of the 2003 Act gives the Scottish Ministers the power to prescribe by regulations other types of bodies which a community may use when forming a community body. Sections 35(A1) and (1) provide that a community body will not be permitted to modify its memorandum, articles of association, constitution or registered rules without the Scottish
Ministers’ consent in writing for as long as its interest remains registered or land which it has bought under Part 2 remains in its ownership.

118. Section 34(4B) of the 2003 Act gives the Scottish Ministers the power by regulations to amend section 35(A1) and (1) to specify the constitutional documents that must not be amended by a community body without Ministers’ consent in writing, should the Scottish Ministers use the power in section 34(A1)(b) to prescribe other types of bodies that communities can use for the purposes of Part 2 of the 2003 Act.

119. The Bill as introduced did not include reference to section 34(4B) in the amendments to section 98(5) of the 2003 Act, which is the section that sets out which instruments made under Ministerial powers are to be subject to the affirmative procedure. The Bill was amended at Stage 2 to change this, and now the power in section 34(4B) is to be subject to the affirmative procedure.

Reason for taking power

120. This power will ensure that the legislation prohibits the amendment of constitutional documents of community bodies without the consent of the Scottish Ministers for as long as the interest remains registered or, as the case may be, land which it has purchased under Part 2 remains in its ownership. This power is subject to the affirmative procedure to allow the Scottish Parliament to give the power a high level of scrutiny.

Choice of procedure

121. Regulations made under section 34(4B) of the Land Reform (Scotland) Act 2003 will be modifying primary legislation. Such regulations will therefore be subject to the affirmative procedure to allow the Scottish Parliament to give them a high level of scrutiny.

PART 5 – ASSET TRANSFER REQUESTS

Section 51(2) – Power to modify schedule 3 - relevant authorities
Section 51(3)(a) – Power to designate a relevant authority
Section 51(3)(b) – Power to designate a class of relevant authorities

Power conferred on: the Scottish Ministers
Power exercisable by: Order
Revised or new power: Revised
Parliamentary procedure: Affirmative procedure

Provisions

122. Schedule 3, introduced by section 51, lists relevant authorities to which an asset transfer request can be made. 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.
123. Subsection (2) of section 51 enables the Scottish Ministers to remove or amend an entry on the list of relevant authorities in schedule 3 by order.

124. In addition to the bodies listed in schedule 3, asset transfer requests can also be made to a person that is designated as a relevant authority or that falls within a class of persons designated as relevant authorities.

125. Subsection (3)(a) allows the Scottish Ministers to designate a relevant authority by order. 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 relevant authority. Subsections (4) to (7) provide more detail on who may be designated as a relevant authority.

**Reason for taking power**

126. Schedule 3 provides a list of public bodies 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 the body from the list or making any necessary amendments to an entry.

127. 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. In addition, it may be that a person of a class of body should be treated as a relevant authority, and section 51(3)(b) will allow the Scottish Ministers to designate that class of persons for this purpose.

**Choice of procedure**

128. In the Bill as introduced, these powers were subject to negative procedure. Following recommendations from the Delegated Powers and Law Reform Committee, section 96(2)(a) was amended at Stage 2 to provide that they should be subject to affirmative procedure. The Scottish Government recognises that changes to the list of bodies included on the list in Schedule 3 to which the provisions apply could have a significant impact on the application of the provisions of the Bill.

**Section 58(2)(c) – Power to specify a person or a class of persons for the purposes of appeals**

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**Provision**

129. Section 58 sets out the circumstances when a community transfer body can appeal in relation to an asset transfer request. Under subsection (2) as introduced, the community transfer
body can appeal to the Scottish Ministers, unless the relevant authority is the Scottish Ministers or a local authority.

130. Paragraph (c) of subsection (2) was inserted at Stage 2. It provides that the Scottish Ministers may in addition specify persons, or persons falling within specified classes, as relevant authorities, with the effect that their decisions are excluded from appeal to the Scottish Ministers.

Reason for taking power

131. The default position in the Bill is that decisions on asset transfer requests are subject to an appeal to the Scottish Ministers. This would mean that decisions made by any relevant authority designated by an order under section 51(3) would be subject to Ministerial appeal. There may be cases in which it is more appropriate for decisions to be subject to review by a local authority under section 59; for example, where the relevant authority is a company wholly owned by one or more local authorities. This power allows for the Scottish Ministers to specify relevant authorities to which this will apply, either individually or as a class.

Reason for choice of procedure

132. The availability of routes of appeal or review has been raised as a matter of concern to many community bodies. Since this provision allows the Scottish Ministers to remove the option of a direct appeal to them, it is appropriate that it should be subject to affirmative procedure.

Section 59(7)(b) – Power to prescribe a time for a decision notice to be given following a review

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Provision

133. Section 59 provides for circumstances in which a local authority must carry out a review of an asset transfer request, on an application made by the community transfer body, and for the procedures to be followed. Subsection (6) requires that, following a review, the local authority must issue a decision notice in respect of the asset transfer request to which the review relates. Paragraph (b) of subsection (7) was inserted at Stage 2, and provides that the decision notice must be issued within a period prescribed in regulations made by the Scottish Ministers, or such longer period as may be agreed between the local authority and the community transfer body.

Reason for taking power

134. This amendment is related to the insertion of section 59B, which allows a community transfer body to appeal to the Scottish Ministers following a review by a local authority. By providing for a period to be prescribed within which a decision notice must be issued, it allows for an appeal to be brought if no decision notice is issued within that time, and will help to ensure that reviews are carried out promptly.
Reason for choice of procedure

135. The period of time for a relevant authority to issue a decision notice is an administrative matter and will be informed by a short and focussed consultation. The negative procedure is therefore considered appropriate, in line with similar powers elsewhere in Part 5.

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

Power conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary procedure: Negative procedure

Provision

136. Under section 59A(2), if a community transfer body has made an asset transfer request to the Scottish Ministers and they have refused the request, agreed to it but attached material terms and conditions different to those in the request or have not given a decision notice timeously, the Scottish Ministers must carry out a review of the case if the community transfer body applies to them to do so.

137. 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. They may also make provision in relation to the appointment of persons for purposes connected with carrying out reviews, and the functions of those persons. Under subsection (4) the regulations may also provide that the manner in which a person appointed in connection with reviews carries out their functions is at their discretion, and that the manner in which a review, or any stage of a review, is to be carried out is at the discretion of the Scottish Ministers.

Reason for taking power

138. The power is to enable the development of the process and procedure for Scottish Ministers’ 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 reviews. The provision for the appointment of persons in connection with reviews is to allow for a degree of external scrutiny; for example, an independent panel may be appointed to make recommendations to the Scottish Ministers about reviews. The arrangements for the appointment of persons may in particular change over time, as the land reform agenda develops, and a regulation-making power allows for this flexibility.

Reason for choice of procedure

139. The process and procedure for asset transfer reviews by the Scottish Ministers are administrative matters, and may change from time to time. It is therefore considered appropriate that the negative procedure 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 59C(4)(a) – Power to make provision for section 59 (review of asset transfer decisions by local authorities) to apply subject to modifications.

Power conferred on: the Scottish Ministers  
Power exercisable by: Order  
Revised or new power: New  
Parliamentary procedure: Negative procedure

Provision

140. Section 59C applies to asset transfer requests made to a relevant authority specified in an order under section 58(2)(c). It provides that where the relevant authority refuses the request, agrees to it but specifies terms and conditions which differ significantly from those specified in the request, or does not give a decision notice within the required period, subsections (2) to (9) of section 59 apply. This means that the community transfer body can apply to a local authority for a review of the case. The power in subsection (4)(a) allows the Scottish Ministers to make provision for the arrangements for local authority review of their own decisions to apply with modifications to review of decisions by another relevant authority.

Reason for taking power

141. Subsections (2) to (9) of section 59 set out arrangements and requirements for local authorities’ review of asset transfer requests made to them. Similar arrangements will apply where a local authority carries out a review of a request made to another relevant authority, but some adjustments are likely to be needed in light of the fact that separate organisations are involved. The power will allow the Scottish Ministers to make those adjustments as necessary.

Reason for choice of procedure

142. The process and procedure for asset transfer reviews by local authorities are administrative matters, and the adjustments required to make them appropriate to review of other relevant authorities’ decisions are likely to be minor. It is therefore appropriate that this power is subject to negative procedure.

Section 59C(4)(b) – Power to specify the local authority, or factors determining the local authority, to which an application for review is to be made.

Power conferred on: the Scottish Ministers  
Power exercisable by: Order  
Revised or new power: New  
Parliamentary procedure: Negative procedure

Provision

143. Section 58(2)(c) allows for the Scottish Ministers to specify a relevant authority, or a class of relevant authorities, whose decisions are excluded from appeal to the Scottish Ministers. Section 59C provides that, where an asset transfer request is made to such a relevant authority, the community transfer body can, in appropriate circumstances, apply to a local authority to review the case. Subsection (4)(b) provides the Scottish Ministers with a power to specify the
local authority to which the application is to be made in such cases, or factors determining the
local authority to which the application is to be made.

Reason for taking power

144. The arrangements set out by section 58(2)(c) and 59C are intended to apply where it is
more appropriate for a local authority to undertake the initial review of a decision, rather than the
Scottish Ministers. Since the relevant authorities to which this will apply are to be specified by
order, it is not possible to determine in advance which local authority should carry out reviews
for each relevant authority, and a power is therefore needed to do this by order. Local authorities
may be specified individually; for example, the local authority which wholly owns the relevant
authority dealing with the request, or they may be identified by factors such as the local authority
area in which the land to which the request relates is located.

Reason for choice of procedure

145. The power is to ensure that provisions equivalent to that in section 59 will work in a
different context, so the local authority which may carry out a review is readily identifiable.
This is an administrative and technical issue, and it is therefore appropriate that this power is
subject to negative procedure.

Section 61A(4) – Power to specify land, or descriptions of land, that a relevant authority
need not include in its register of land.

<table>
<thead>
<tr>
<th>Power conferred on:</th>
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<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Regulations</td>
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<tr>
<td>Revised or new power:</td>
<td>New</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
</tr>
</tbody>
</table>

Provision

146. Section 61A places a duty on each relevant authority to establish and maintain a register
of land which, to the best of the authority’s knowledge and belief, is owned or leased by the
authority, and to make this register available for inspection by the public. Subsection (4)
provides that the Scottish Ministers may by regulations specify land, or descriptions of land, that
need not be included in this register.

Reason for taking power

147. The requirement to publish a register of land will help community bodies to be aware of
property that may be available for asset transfer, so that they can identify which is most suitable
for their needs. However, the legal definition of “land” is very wide and includes rights and
interests in land, such as ground rents and access rights, which are unlikely to be targets for asset
transfer in themselves. The ability to exclude such categories will help to focus the register on
properties that are likely to be of interest. This is a detailed and technical area which is more
appropriate to address through secondary legislation. It may also be the case that the exclusions
will need to be adjusted over time, as new ideas are developed by community bodies.
Reason for choice of procedure

148. The details of land that need not be included in the register is considered sufficiently significant that it will be set out in secondary legislation, rather than guidance. However, the exclusions will be of a detailed technical nature, and therefore negative procedure is considered to be most appropriate.

PART 5B – SUPPORTERS’ TRUST’S RIGHT TO BUY SCOTTISH PROFESSIONAL FOOTBALL LEAGUE CLUBS.

Section 62C – Power to change the meaning of a football club

Power Conferred on: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary Procedure: Negative procedure

Provision

149. Section 62C was inserted at Stage 2 and provides for a definition of a “Scottish Professional Football League club” as a football club which is a member of the Scottish Professional Football League or any successor body as recognised by the Scottish Football Association. Subsection (2) provides that the Scottish Ministers can change the meaning of “football club” by regulation. Subsection (3) states that the Scottish Ministers must consult before making any regulations to modify the definition.

Reason for taking the power

150. This provision will allow the Scottish Ministers flexibility in the future to modify the meaning of football club should changes be required.

Reason for choice of procedure

151. Regulations made under section 62C are subject to the negative procedure and will be informed by consultation as set out in subsection (3). This 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 62F(1) – Power to prescribe information to be provided to the Scottish Ministers by a supporters’ trust

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<td>Parliamentary Procedure:</td>
<td>Negative procedure</td>
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</table>

**Provision**

152. Section 62F sets out how an interest in buying a football club may be registered on an application by a supporters’ trust to the Scottish Ministers and the procedure to be followed. The Scottish Ministers are to make regulations setting out the specific information required in the application and the form in which this information should be provided.

**Reason for taking the power**

153. It is important that the Scottish Ministers are provided with the appropriate information by the supporters’ trust. This level of procedural detail is usually left to regulations.

**Reason for choice of procedure**

154. The matters to be detailed in regulations are details of procedure and accordingly it is appropriate that this power is subject to the negative procedure.

Section 62I(3) – Power to prescribe information to the Scottish Ministers on activation of supporters’ trust right to buy

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<td>Parliamentary Procedure:</td>
<td>Negative procedure</td>
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**Provision**

155. Section 62I sets out that the supporters’ trust’s interest may be exercised when the owner or operator is deemed to have given notice of their intention to transfer ownership or that the club has entered into formal insolvency. The owner or operator must give such notice to the supporters’ trust or trusts which have a registered interest, and to the Scottish Ministers, in such form and in accordance with such provisions as may be prescribed.

**Reason for taking power**

156. It is important that the Scottish Ministers and the supporters’ trust, or trusts, are provided with the appropriate information by the owner or operator. This level of procedural detail is usually left to regulations.
Reason for choice of procedure

157. The matters to be detailed in regulations are details of procedure. This is an administrative issue and accordingly it is appropriate that this power is subject to the negative procedure.

Section 62K(2)(a) and (b) – Power to prescribe the form notifying supporters’ trusts and the owner or operator of a football club following the activation of right to buy

Power conferred to: the Scottish Ministers
Power exercisable by: Regulations
Revised or new power: New
Parliamentary Procedure: Negative procedure

Provision

158. Section 62K sets out the initial procedure after the activation of the supporters’ trust right to buy. This includes the Scottish Ministers seeking confirmation that the trust will exercise its right to buy. The trust has 30 days to respond and if they do not the right to buy is extinguished. The Scottish Ministers must direct the Keeper to enter details of the notification given under section 62I into the register, and must send copies of the notice sent by them to the supporters’ trust and any response to the Keeper and the owner of the club.

159. Under subsections (2)(a) and (2)(b) the Scottish Ministers must send a notice to the supporters’ trust or trusts in the prescribed form seeking their confirmation that the trust(s) will exercise its right to buy and must also send a notice to the owner or operator of the football club in a prescribed form that they have sought the confirmation of the trust(s).

Reason for taking these powers

160. It is important that the supporters’ trust, or trusts, and the owner or operator of the football club are provided with the appropriate notification by the Scottish Ministers. This level of procedural detail is usually left to regulations.

Reason for choice of procedure

161. The matters to be detailed in regulations are details of procedure. This is an administrative issue and accordingly it is appropriate that this power is subject to the negative procedure.
Section 62O(7) – Power to make provision about when ownership is to be treated as transferred

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<td>Parliamentary Procedure:</td>
<td>Negative procedure</td>
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**Provision**

162. Section 62O sets out the procedure for buying the football club. The supporter’s trust is to make an offer at a price agreed between the trust and the owner or, if no agreement is reached, at a value assessed by an appointed valuer or determined after an appeal of the assessed value. The price is to be paid and ownership transferred not later than 6 months from the date that the supporters’ trust confirmed its intention to exercise the right to buy. Later dates are provided for if an appeal over the assessed value has not been concluded within 4 months of the confirmation. If missives have not been concluded within the required period then the right to buy is extinguished, unless the Scottish Ministers are satisfied that the supporters’ trust has taken all reasonable steps to conclude the missives.

**Reason for taking these powers**

163. The provision provides the Scottish Ministers the ability to set out in more detail when ownership is to be treated as transferred.

**Reason for choice of procedure**

164. Matters relating to the transfer of ownership 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 used so as to achieve the best balance of parliamentary time on the one hand and the nature of the content of the order on the other.

**PART 7 – ALLOTMENTS**

Section 69A – Regulations as to size of allotments

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<td>Parliamentary procedure:</td>
<td>Negative procedure</td>
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**Provision**

165. Section 68 defines, “allotment” for the purpose of Part 7 of the Bill. The definition was amended at Stage 2 to remove the delegated power in section 68(d), (paragraphs 202-204 of the Delegated Powers Memorandum on the Bill as introduced) that allowed the Scottish Ministers to make regulations setting out the size of land that was to constitute an allotment. The amended definition of allotment at section 68(1)(d) includes a requirement for the size of an allotment to be “approximately 250 square metres”. The revised definition also allows an allotment to be
smaller than this size should it be requested by the person leasing or intending to lease it (section 68(3)).

166. Section 69A relates to the delegated power that was included in the Bill as introduced (in section 68(d)) and requires the Scottish Ministers to make provision on size or sizes of allotments, but without affecting the revised requirements in section 68(1)(d) (section 68(d) on introduction). Before any regulations are brought forward under this provision the Scottish Ministers must consult each local authority and any other appropriate person.

**Reason for taking power**

167. This power was taken to require the Scottish Ministers to make provision on the specific size or sizes of allotments for the purposes of Part 7. The Scottish Government, however, considers that the requirement may be impracticable in light of the amendments to section 68(1)(d) made at Stage 2, as described above. The Scottish Government’s preferred approach would be to bring forward further amendments at Stage 3.

**Reason for choice of procedure**

168. It is not considered that detailed Parliamentary scrutiny is required for this provision since it will further define the size of an allotment. It is therefore considered appropriate that these regulations should be subject to negative procedure. This 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 hand.

**Section 73 – Allotment site regulations**

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<tr>
<th>Power conferred on:</th>
<th>Local Authorities</th>
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<td>Power exercisable by:</td>
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<td>Revised or new power:</td>
<td>Revised</td>
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<td>Parliamentary procedure:</td>
<td>None</td>
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**Provision**

169. 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 section 73 comes into force.

170. Section 73(3) sets out the matters on which regulations must in particular be made. These include rent (section 73(3)(b)). This was expanded upon at stage 2 to include a requirement for regulations to provide a method of determining fair rent, taking into account the factors at section 73(3)(b)(i),(ii) and (iii). Section 73(4) sets out matters on which regulations may in particular be made. These matters were amended at stage 2. Section 73(4)(a) as introduced was removed to avoid duplication with section 73(4)(b). Section 73(4)(f) as introduced provided that regulations may be made for and in connection with the sale of surplus produce (in addition to the provisions of any regulations made under section 87(1)). The words in parenthesis were removed at Stage 2 as a consequence of removal of the delegated power in section 87(1). The power at section 73(1) in the Bill as introduced allowed for different provisions for different
areas or types of allotment sites (section 73(5)). The power was amended at Stage 2 to allow for different provision for different areas or different allotment sites.

Reason for taking power

171. It is considered to be appropriate for local authorities to have the power to make regulations for the allotment sites in their areas. This will give local authorities flexibility to manage allotment sites as they consider fit. The Stage 2 amendment to the requirement on rent (section 73(3)(b)) was made to ensure that within this flexibility, local authorities must nonetheless have a method to ensure that the rent they charge for allotments is fair. Section 87(1) as introduced permitted the sale of surplus produce only if it fell within a prescribed description. The delegated power was removed at Stage 2 as it was considered unnecessary to restrict the types of produce that may be sold. Consequently, the reference in section 73(4)(f) to provisions of regulations made under section 87(1) was no longer required. There is a wide variety of allotment site-types with respect to their layout and management. This power enables local authorities to make regulations that are tailor-made to each individual allotment site should this be necessary.

Reason for choice of procedure

172. Since this provision is delegating powers to local authorities to regulate allotment sites in their local area it was viewed that Parliamentary scrutiny was inappropriate. Before making regulations a local authority must consult those people who appear to the local authority to have an interest and follow the procedure set out in section 74.

PART 7A – PARTICIPATION IN PUBLIC DECISION-MAKING

Section 93A – Participation in decisions of certain persons exercising public functions

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<td>Parliamentary procedure:</td>
<td>Affirmative procedure</td>
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Provision

173. Section 93A provides a regulation-making power enabling the Scottish Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the allocation of resources. Subsection (5) makes it clear that the regulations can confer functions on persons, specify the activities to which the regulations can apply, and require the persons to prepare and publish a report. The persons must also have regard to any guidance issued by the Scottish Ministers.

Reason for taking power

174. Involving people and communities in making decisions helps to build community capacity and can also help the public sector identify local needs and priorities and target budgets more effectively. As the Minister for Local Government and Community Empowerment outlined during discussions on the amendment with the Local Government and Regeneration Committee:
“The intention is that the new power will ensure that participatory activity takes place and that the associated guidance will drive the quality and depth of that participatory activity over time. I wanted any legislative solution to have the flexibility to build up, change and develop over time. Given the different functions, budgets and structures of public authorities, I knew that having a single approach would not work.”

**Reason for choice of procedure**

175. The details to be included in the regulations is considered sufficiently significant that the affirmative procedure is considered to be most appropriate.
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM