COMMUNITY EMPOWERMENT (SCOTLAND) BILL
[AS AMENDED AT STAGE 2]

SUPPLEMENTARY FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.7.8B of the Parliament’s Standing Orders, this Supplementary Financial Memorandum is published to accompany the Community Empowerment (Scotland) Bill (introduced in the Scottish Parliament on 11 June 2014) as amended at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Financial Memorandum published to accompany the Bill as introduced.

3. The purpose of this Supplementary Financial Memorandum is to set out the expected costs associated with the new and amended provisions included in the Bill following Stage 2 amendments. The majority of amendments do not significantly affect the assumptions in the original Financial Memorandum. This document addresses those amendments where additional costs are likely to be significant or where the future additional costs are uncertain as they are dependent on the level of demand but there is a potential for significant costs to be incurred.

PART 3: PARTICIPATION REQUESTS

4. Section 24A of the Bill was added by amendment at Stage 2. The amendment introduces a right of appeal to the Scottish Ministers in relation to participation requests. An appeal may be made when a public service authority refuses a participation request or when a community participation body has “significant concerns” about the provisions within a decision notice.

Costs on the Scottish Administration and public bodies (other than local authorities)

5. These provisions will apply in relation to public services provided by the listed public bodies. As indicated in the Financial Memorandum submitted with the Bill on introduction there are likely to be costs associated in responding to participation requests. However, it was noted that the total costs for each public body will depend on how often community participation bodies use the provisions in Part 3 and at this stage it is difficult to forecast use across Scotland.

6. Further information was provided to the Finance Committee on 3 October 2015 which provided an estimate of potential costs associated with an individual participation request:
The estimated cost of the majority of individual participation requests was between £1,000 and £7,500.

The proposals set out in section 24A would have resource implications for the Scottish Government. There would be a need for staff and administrative resources to be deployed in order to be able to exercise the additional function foreseen for the Government by the new section 24A. The impact cannot be estimated with any accuracy at this stage as it will be predicated on actions by community participation bodies that are not within the Government’s control and will be based on process and procedure to be set out in regulations. It may be that the additional function can be amalgamated within current structures. However to provide an indication of the average staff cost, a typical team of four comprising a member of staff at each of C1, B2, B1 and A3 grades would cost £157,962 per year.

The proposals set out in section 24A would also have resource implications for the listed public bodies (other than local authorities – see paragraph 10 below). There would be a need for additional staff, administrative and legal resources to respond to any appeal made by a community participation body in relation to a participation request that involves the public authority. As above these costs cannot be estimated with any accuracy at this stage as they will be predicated on actions by community participation bodies and will be based on process and procedure to be set out in regulations.

Costs on local authorities

The proposals set out in section 24A would have resource implications for local authorities. As for other public bodies above, there would be a need for additional administrative and legal resources to respond to any appeal made by a community participation body in relation to a participation request that involves the local authority. These costs cannot be estimated with any accuracy at this stage as they will be predicated on actions by community participation bodies and will be based on process and procedure to be set out in regulations.

PART 4: COMMUNITY RIGHT TO BUY LAND

Sections 47E (which amends section 75 of the Land Reform (Scotland) Act 2003) and section 48 (which inserts section 97J into the 2003 Act) of the Bill were amended at Stage 2. The purpose of these amendments is to allow community bodies, who are applying through either the crofting community right to buy (Part 3 of the 2003 Act) or the right to buy abandoned or neglected land (the new Part 3A of the 2003 Act as inserted by the Bill), to apply to the Scottish Ministers for the reimbursement of ballot costs.

Costs on the Scottish Administration

The amendments agreed in Committee at Stage 2 will have resource implications for the Scottish Government. Section 37 of the Bill as introduced, stated 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, by the Scottish Ministers.

13. There was no such provision in Part 3 or the new Part 3A of the 2003 Act. The processes for applications under Part 3 and Part 3A of the 2003 Act are different from those under Part 2. In the case of application under Part 3 or 3A of the 2003 Act, the ballot is held before the Scottish Ministers receive the application to buy land, and therefore is the first indication of community support for the application. For applications to register an interest in land under Part 2, community support is demonstrated via the likes of a petition and the ballot is only held once the community has confirmed that it wishes to proceed with the actual purchase.

14. For this reason, it was considered that a ballot under Part 3 or 3A of the 2003 Act should not be run, or the expenses met by, the Scottish Ministers with no information or indication of the level of community support. Stakeholder submissions to the Rural Affairs, Climate Change and Environment Committee indicated that this was an omission. During discussions with the Committee the Government recognised that there was an imbalance between applications under Part 2 on the one hand and under Parts 3 and 3A on the other hand in this respect. 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 and 3A of the 2003 Act.

15. These circumstances will be set out in regulations. For example, it could be relevant that the ballot has shown significant community support for the application. This would be to prevent a ballot being used by a minority of a community, and the Scottish Ministers then having to meet the costs of each and every ballot. In the Financial Memorandum submitted with the Bill on introduction, it was estimated that the average cost of a ballot under Part 2 of the 2003 Act was between £1,040 and £5,353.

16. The additional costs of this provision in relation to Part 3 and Part 3A of the 2003 Act on the Scottish Ministers will depend on the number of applications made, the size of the community to be balloted in each case, and the approach adopted to the ballot. As the community right to buy is driven by the demand from communities any estimation of the number of ballots required will be difficult and subject to wide variation.

17. To date, there have only been two community bodies which have used the crofting community right to buy under Part 3 of the 2003 Act. We might expect that following the improvements made to the 2003 Act through the Bill there will be an increase in demand and a potential for ballots to be necessary. This demand is also likely to increase with the amendments to Part 3A. Should there be an additional 5-10 cases this would result in an additional cost to the Scottish Ministers of between £26,765 and £53,530 per annum (using the higher figure for the average estimated cost).

PART 5: ASSET TRANSFER REQUESTS

18. A series of amendments were agreed by the Local Government and Regeneration Committee which made a number of changes to the asset transfer request provisions. This included a change to the local authority review procedures (section 59B) and a new duty on the listed public authorities to establish and maintain a register of land (section 61A).
Local authority review procedures

19. Section 59B creates the right for a community transfer body to appeal to the Scottish Ministers in relation to decisions made by local authorities on asset transfer requests. They can do so if, following a review by the local authority, a local authority refuses the asset transfer request, or agrees it but sets out material terms and conditions which are significantly different from those included in the original request, or if no decision is reached within a prescribed period.

Register of land

20. Section 61A requires the listed public authorities to establish and maintain a register of land which to the best of their knowledge they own or lease and to make it available to the public to inspect in person and online. The new section will assist community bodies in identifying property that may be available for asset transfer.

21. The section gives powers to the Scottish Ministers to specify land that need not be included in the register and requires the relevant public authorities to have regard to any guidance issued by the Scottish Ministers in relation to the section.

Costs on the Scottish Administration and public bodies (other than local authorities)

Local authority review procedures

22. The proposals set out in section 59B would have resource implications for the Scottish Government. There would be a need for staff and administrative resources to be deployed in order to be able to exercise the additional function foreseen for the Government by the new section 59A. The impact cannot be estimated with any accuracy at this stage as it will be predicated on actions by community transfer bodies and local authorities that are not within the Government’s control. It may be that the additional function can be amalgamated within current structures but as provided under paragraph 8 above additional staff resources may be required. As an indication, the average staff cost of a team of four comprising a C1, B2, B1 and an A3 would be £157,962 per year should the need for a new team arise.

Register of land

23. The proposals set out in section 61A could have resource implications for the relevant public authorities (other than local authorities – see paragraph 25 below). It is not anticipated that the requirement will have significant additional cost implications as all public bodies are required to maintain proper accounts, and in order to do so they must know the value of the property they own or lease. To support this they should already have in place an effective property management system and register. However, the Bill will require the public body to ensure the register is available to the public and they may require to put some additional resource to establish and maintain an accessible register. The costs for each public authority will vary but in line with the creation and maintenance of the register of applications for community right to buy, as referenced in the Financial Memorandum submitted with the Bill on introduction (paragraph 56), we might expect that the creation of an accessible register could cost up to £10,000 in staff time and administrative resource. Thereafter, there will be on-going site maintenance and update costs anticipated to be up to £10,000 per year.
Costs on local authorities

Local authority review procedures

24. The proposals set out in section 59B would have resource implications for local authorities. There would be a need for additional administrative and legal resources to respond to any appeal made to the Scottish Ministers by a community transfer body in relation to an asset transfer request that involves the local authority. It is anticipated that the appeal process would only be used in a limited number of cases and any additional costs are unlikely to be significant however the costs cannot be estimated with any accuracy at this stage as they will be predicated on actions by community transfer bodies.

Register of land

25. As above for public bodies the proposals set out in section 61A could have resource implications for the listed local authorities. It is not anticipated that the requirement will have significant additional cost implications as all local authorities are required to maintain proper accounts, and in order to do so they must know the value of the property they own or lease. To support this they should already have in place an effective property management system and register. However, the Bill will require the public body to ensure the new register of land is available to the public and they may require to put some additional resource to establish and maintain the register. As for other public bodies outlined in paragraph 23 above and in line with the creation and maintenance of the register of applications for community right to buy we might expect that the creation of an accessible register could cost up to £10,000 in staff time and administrative resource. Thereafter, there will be on-going site maintenance and update costs are anticipated to be up to £10,000 per year.

PART 5B: SUPPORTERS’ TRUST'S RIGHT TO BUY SCOTTISH PROFESSIONAL FOOTBALL LEAGUE CLUBS

26. Part 5B of the Bill was added by amendment at Stage 2 and aims to provide a legal framework for supporters’ trusts to have a right to buy their football club.

Costs on the Scottish Administration

27. The proposals as set out would have resource implications for the Scottish Government. There would be a need for staff and administrative resources to be deployed in order to be able to exercise the additional functions foreseen for Government. The impact cannot be estimated with any accuracy at this stage as they will be predicated on actions by community bodies outwith Government’s control. In order to provide an average staff cost, however, an estimated figure of £140,888 per year can be provided based on the structure of the Government’s “Community Right to Buy Branch” – i.e. a team of four, comprising a member of staff at each of B3, B2, B1 and A3 grades. It should be noted, however, that with 42 clubs in Scotland, the rights put forward by the proposed amendments are likely to be exercised less often that in relation to the Community Right to Buy, potentially resulting in a lower staff cost. Again, it is difficult to quantify the exact difference at this stage.
Valuation

28. Section 62Q requires the Scottish Ministers to pay for an independently conducted valuation once the right to buy is triggered. Unlike Community Right to Buy, which is focused on the valuation of a specific piece of land, the value of a football club will be dependent on a range of factors including ownership structures, shares, land, moveable property, liabilities and intellectual property rights. It may also be necessary to consider the rights of employees (particularly players), creditors, minority shareholders and other interested persons depending on the situation. Supporters Direct Scotland provide a service including financial assessment and due diligence which will contribute to any assessment of valuation and this can cost in the region of £20,000 per case. The costs of valuation will vary according to the complexity of each case.

Supporters trust register

29. Section 62D requires the Keeper of the Registers of Scotland to create and maintain a public register of supporters’ trusts who have registered an interest in buying a football club. As referenced in the Financial Memorandum submitted with the Bill on introduction on community right to buy (paragraph 56), it is expected that an accessible register will cost £10,000 to set up, similar to costs associated with setting up the Register of Community Interests of Land for Part 2 of the 2003 Act. Thereafter, there will be on-going site maintenance and update costs, anticipated to be up to £10,000 per year. This figure is based on current Registers of Scotland invoicing to the Scottish Ministers.

Costs arising from appeals

30. Section 62R provides that an owner or operator of a football club or a supporters’ trust may in a number of situations appeal to a sheriff against decisions of the Scottish Ministers or the valuation of the football club.

31. At this stage it is difficult to estimate how many appeals may be made against the decisions of the Scottish Ministers or the valuation of the football club. It may be worth noting that, as indicated in the Financial Memorandum submitted with the Bill on introduction on community right to buy, there have been six cases since 2004 brought against decisions by the Scottish Ministers pertaining to various things in the application process (paragraph 42). This would suggest that there is not likely to be a large number of appeals. The costs of the appeal were entirely dependent on level of legal representation required and a cases complexity and have varied between £3,000 and £20,000.

Costs on other bodies, individuals and businesses

32. The provisions on a supporters’ trust’s right to buy Scottish Professional League Football clubs will lead to an increase in costs on other bodies, individuals and businesses. However, there is a large degree of uncertainty on the level of costs that may be incurred as it will be up to the individual supporters’ trusts and club owners in how to use and respond to the provisions, including the need for appropriate legal advice.

33. For example, club owners could incur costs in relation to seeking professional advice during any sale period, i.e. solicitors’ and estate agents’ fees, as well as court fees. When
activating their right to buy, communities may also incur the cost of hiring expert advice, purchase costs and any appeal and court fees that will arise due to the process.

34. Supporters Direct Scotland (SDS) provide services to clubs and fan groups during periods of uncertainty as to a club’s on-going viability, facilitating structural changes which could lead to full or part-owned community clubs. Whilst costs vary considerably from case-to-case, depending on the size and complexity of the club concerned, SDS can incur costs in the region of £20,000 throughout the conversion process to community-ownership. This includes services relating to consultation, financial assessment, negotiation, due diligence, taxation, governance, community share offers, football authority membership and constitutional arrangements. As the size and complexity increases, SDS would incur additional costs brought about by the need to procure additional specialist services.

35. A club at the point of insolvency and awaiting mobilisation of a supporters group may experience loss of players, with 3rd parties unable to become involved in bidding. This may result in more clubs going into liquidation than at present.

PART 7: ALLOTMENTS

36. Section 72 of the Bill was amended at Stage 2 and brings forward provisions that require local authorities to take reasonable steps to ensure that residents do not wait for more than 5 years for an allotment.

Costs on local authorities

37. There is no legal requirement to keep a list at present and it is difficult to forecast future demand. However, the majority of the 15 local authorities that provided financial information already directly maintained lists. More than half of these authorities would be required to take reasonable steps to provide allotments on commencement of the Act to meet the new duty. We estimate that this would require reasonable steps to be taken to create 1,010 new allotments (based on currently available information on waiting lists and number of allotments) on commencement (based on the estimated costs per plot). This means that, if in every individual case creating a new allotment was deemed to be a reasonable step, the maximum total cost for these local authorities would range from £1,919,000 to £6,312,500; with the greatest demand being in areas of high population density. There is a lack however, of information to confirm the length of time that individuals have been waiting for an allotment on current lists and as such the costs may differ.

38. Additionally, depending on the reasonable steps an authority takes to ensure that the duty relating to the time on the list is met they may purchase additional land. The price of land varies between different areas and over time resulting in the costs being difficult to estimate.

39. The Bill, as amended, also defines an allotment in terms of: it being owned or leased by a local authority; its intended use; and its size with the latter requiring that an allotment is approximately 250 square metres or of such as size as requested should this area be less than 250 square metres (section 68).
40. A number of local authorities may need to buy land to meet the duty to take reasonable steps to provide allotments. Additionally, should residents on the list all require allotments of 250 square metres there is a strong likelihood that more allotments will be needed to meet demand (this is dependent on an authorities approach to taking reasonable steps). Given that it is difficult to estimate demand for different sized allotments and that land prices vary between different areas and over time it is difficult to estimate the capital costs associated with the purchase of any new land to meet the duty to provide allotments.
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