COMMUNITY EMPOWERMENT (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Community Empowerment (Scotland) Bill introduced in the Scottish Parliament on 11 June 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government statement on legislative competence; and
- the Presiding Officer’s statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 52–PM.
INTRODUCTION

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

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

OVERVIEW

3. The Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:
   - empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
   - support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.

4. The Bill comprises 9 Parts with 5 schedules:
   - **Part 1** places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the “Scotland Performs” framework.
   - **Part 2** places community planning partnerships on a statutory footing and imposes duties on them around the planning and delivery of local outcomes. Schedule 1 lists the bodies which are to be community planning partners. This Part replaces provision in Part 2 of the Local Government in Scotland Act 2003, which is repealed by schedule 5.
   - **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered. Schedule 2 lists “public service authorities” to whom participation requests can be made.
   - **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
   - **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, certain Scottish public bodies or Scottish Ministers. The list of “relevant authorities” affected is given in schedule 3.
   - **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities
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to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plotholders. This replaces the provisions of the Allotments (Scotland) Acts 1892, 1922 and 1950, which are repealed in their entirety by schedule 5, and some provisions of the Land Settlement (Scotland) Act 1919.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities. It does this by inserting a new section into the Local Government (Financial Provisions etc.) (Scotland) Act 1962.

- **Part 9** makes general provisions in relation to the Bill, including provision about subordinate legislation, ancillary provision and commencement. Schedule 4 makes minor and consequential amendments to other legislation, and schedule 5 provides for repeals.

**COMMENTARY ON SECTIONS**

**Part 1: National outcomes**

5. The Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland. They must also regularly and publicly report progress towards those outcomes. These duties do not require governments to use a particular model of purpose, targets, outcomes and indicators. They require national outcomes to be determined, but there is flexibility as to how these may be presented and measured.

**National outcomes**

6. Subsection (1) of section 1 provides that the Scottish Ministers must determine national outcomes. National outcomes are outcomes for Scotland that result from or are contributed to by the devolved functions carried out by the persons set out in subsection (1)(a) to (c). The definitions are wide to allow the inclusion of all organisations that could be considered as “public bodies”, and other organisations that carry out public functions, such as private or third sector bodies who are contracted to deliver public services. The persons included in the category “Scottish public authority” include the Scottish Ministers and local authorities.

7. Subsection (2) requires the Scottish Ministers to consult “such persons as they consider appropriate” before determining the national outcomes. No list is specified, but since the national outcomes will have an impact on the devolved functions of all public bodies, it is expected that Ministers will want to consult widely.

8. Subsections (4) to (6) impose a duty on those persons set out in subsection (1)(a) to (c) to “have regard to” the national outcomes in carrying out their devolved functions. “Have regard to” means that all of these bodies should be consistent with the national outcomes in what they are trying to achieve in carrying out their devolved functions.
Review of national outcomes

9. Subsection (1) of section 2 provides that the Scottish Ministers may review the national outcomes at any time. This is subject to subsection (2) which requires that, once the Scottish Ministers have published national outcomes, they must begin to review them before the expiry of 5 years from publication at a minimum. It will be for the Scottish Ministers to decide how frequently within that 5 year period they wish to review the national outcomes.

10. Subsection (1) is also subject to subsection (3) which provides that the Scottish Ministers must begin further reviews of the national outcomes every 5 years at a minimum from the date of publication of revised national outcomes or republished national outcomes. Subsection (4) provides that the Scottish Ministers may revise the national outcomes following a review. The national outcomes must then either be published as revised or, where no changes are made, they must be republished. In either case, this will mark the beginning of the 5 year period under subsection (3).

11. Subsection (5) requires that the Scottish Ministers consult with “such persons as they consider appropriate” when reviewing the national outcomes and that any changes made must be published.

Reports

12. Section 3 requires that the Scottish Ministers must publicly report on progress towards achieving the national outcomes, whether that is positive or negative progress.

13. This does not necessarily require a written report, although it may do. The format of the reporting will be for the Scottish Ministers to decide. The current system, “Scotland Performs”, uses a website showing upward and downward arrows to indicate positive or negative progress: [http://www.scotland.gov.uk/About/Performance/scotPerforms/indicator](http://www.scotland.gov.uk/About/Performance/scotPerforms/indicator).

Part 2: Community planning

14. This Part replaces provisions on community planning in Part 2 of the Local Government in Scotland Act 2003. It provides a statutory basis for community planning partnerships, and places duties on them around the planning and achievement of local outcomes. It also focuses responsibilities on community planning partners to support each partnership to fulfil its duties.

Community planning

15. Section 4 defines “community planning”, “community planning partners” and “community planning partnerships”. Community planning is planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the community planning partners. Subsection (3) states that these local outcomes must be consistent with national outcomes which Scottish Ministers determine under section 1(1), or as revised under section 2(4)(a). The persons listed in schedule 1, together with local authorities, are the community planning partners. The community planning partnership comprises these partners when they participate together in community planning. Subsection (5) requires a community
planning partnership to make all reasonable efforts to secure the participation of appropriate community bodies in community planning, and to take steps to enable them to participate to the extent they wish to.

16. Subsection (6) enables Scottish Ministers to amend the list of community planning partners in schedule 1 by regulations. Subsection (7) 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 functions but not others.

Local outcomes improvement plan

17. Under section 5 each community planning partnership must prepare a local outcomes improvement plan. To that end the community planning partnership must identify the local outcomes to which it is to give priority with a view to improving the achievement of the outcome. The plan will provide a description of the improvement in local outcomes that is sought and the timeframe for achieving the improvement (subsection (2)). Subsection (3) requires the partnership to consult such community bodies and other persons as it considers appropriate when it prepares its plan. Subsection (4) sets out what a partnership must take account of before it publishes its final plan. This includes representations it receives as a result of the consultations with community bodies and other persons carried out in accordance with subsection (3). The partnership must also take account of the needs and circumstances of people and communities in the area.

18. Section 6 requires that the community planning partnership must monitor progress in improving the achievement of local outcomes referred to in its local outcome improvement plan. It must keep the plan under review to determine whether the plan itself is still appropriate and must publish any revised plan which results from such a review.

19. Each partnership must prepare and publish an annual report of the progress made in improving the achievement of local outcomes referred to in its local outcome improvement plan, in accordance with section 7. The period which these reports must cover is the year beginning on 1 April, unless Ministers specify another date for the year to start in a direction to the partnership.

Governance

20. Section 8 places governance responsibilities on specified community planning partners for the purpose of effective community planning. Under subsection (1)(a) the specified partners must facilitate community planning and under subsection (1)(b) the specified partners must take reasonable steps to ensure that the partnership operates efficiently and effectively. Subsection (2) lists the persons to whom these governance duties apply. Subsection (3) enables Ministers to modify this list by regulations.

Duties on community planning partners

21. Subsections (2) to (5) of section 9 describe how the community planning partners, listed in schedule 1, must participate in community planning. These responsibilities include cooperating with other community planning partners in carrying out community planning
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(subsection (2)) and taking account of the published local outcomes improvement plan as part of its work (subsection (5)). They also include committing appropriate resources to the achievement of local outcomes set out in that plan and for the purpose of securing the participation of relevant community bodies in community planning (subsection (3)). Each community planning partner must provide the partnership with such information about the local outcomes in the plan which the partnership may request (subsection (4)). Section 9(1) enables a partnership to agree with a partner a reduction in the extent to which that partner is expected to comply with its duties to that partnership.

**Guidance by Scottish Ministers**

22. Section 10 provides that community planning partnerships and partners must carry out their functions in relation to community planning in accordance with any relevant guidance issued by the Scottish Ministers. The Scottish Ministers must consult such persons as they think fit before they issue any such guidance.

**Duty to promote community planning**

23. Section 11 requires the Scottish Ministers to promote community planning when discharging any function which might affect community planning, or a community planning partner. It reproduces a provision previously in section 16(8) of the Local Government in Scotland Act 2003.

**Establishment of corporate bodies**

24. Section 19 of the Local Government in Scotland Act 2003 gives Scottish Ministers a power to establish corporate bodies to co-ordinate community planning. As a body corporate, a community planning partnership could, for example, hold its own budgets and assets and employ its own staff.

25. Section 12 of the Bill retains the option of incorporation in appropriate cases, by replacing the provisions of section 19 of the 2003 Act. Subsection (1) allows Scottish Ministers to establish a body corporate by regulations, following an application made by a local authority and at least one other community planning partner in the area. Any application must include information about the matters which are listed in subsection (2). Subsection (3) lists matters about the body corporate which Scottish Ministers can specify in any regulations they make. Subsection (4) allows the regulations to provide that the corporate body may discharge a function, even where another enactment specifies that as the function of another body or prevents the carrying out of that function by the corporate body.

**Part 3: Participation requests**

26. This Part sets out how a “community participation body” can make a request to a “public service authority” to participate in a process with a view to improving an outcome of a public service, and how public service authorities are to deal with such requests. The Bill provides the main structure of the approach, and there are powers for the Scottish Ministers to make regulations adding more detail about procedures to be followed, timescales, and information to be provided or published.
Community controlled body

27. Section 14 defines a “community-controlled body”. This can be a corporate body or unincorporated, but it must have a written constitution which:

- defines the community to which the body relates;
- provides membership rules which ensure the body is open to and controlled by members of that community, and that the majority of the members of the body are members of that community;
- sets out aims and purposes which include the promotion of a benefit for that community; and
- provides that any surplus funds or assets are to be used for the benefit of that community.

There are no restrictions on how a community may be defined for this purpose: it may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

Community participation body

28. Section 15 defines a “community participation body”, which is the type of body which can make a participation request under section 17. A community participation body may be a community-controlled body, a community council, or a body designated by the Scottish Ministers. The Scottish Ministers may designate individual bodies as community participation bodies, or may designate a whole class of bodies, so that any body of that type will qualify as a community participation body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

Public service authority

29. Schedule 2, introduced by section 16, lists the bodies to which a participation request can be made, to be known as “public service authorities”. This includes local authorities, Health Boards, and certain other Scottish public bodies. The public bodies selected are involved in providing or supporting local services. The list does not include, for example, boards which advise Ministers or which regulate certain professions.

30. The remainder of section 16 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other bodies or classes of bodies as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:

- part of the Scottish Administration (which has the meaning given in sections 126(6) to (8) of the Scotland Act 1998);
- “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government Departments and public bodies that deal with matters reserved to the UK Government cannot be included;
- companies wholly-owned by public service authorities.
Under subsection (9), when adding a person to the list, Scottish Ministers may exclude some of the services they provide from being subject to participation requests.

**Participation requests and the outcome improvement process**

31. Section 17 provides that a community participation body, or two or more bodies jointly, may make a participation request to a public service authority. This is a request to take part in a process established by the authority with a view to improving an outcome of a public service. Subsection (2) says that the request must focus on an outcome relating to a service provided by that authority, and the community participation body must explain why it considers it should be involved, what it can bring to the process (for example, members’ experience as users of the service), and what improvement it expects might be achieved as a result.

32. Section 18 gives the Scottish Ministers powers to make regulations setting out further detail on participation requests. Regulations can, in particular, cover how requests are to be made, how public service authorities should deal with them, and additional information to be provided in connection with requests.

33. Section 19 requires a public service authority to agree to or refuse any participation request it receives, and sets out in subsections (3) to (5) how the authority must make that decision. In addition to the reasons provided in the request, the authority must consider whether agreeing to the request would be likely to promote or improve economic development, regeneration, public health, social or environmental wellbeing, and any other benefits or matters the authority considers relevant. The authority must also take into account its responsibilities in relation to equal opportunities. It must agree to the request unless there are reasonable grounds for refusal. Subsection (6) requires the authority to give notice of its decision to the community participation body within a prescribed period, and if it refuses the request, it must give reasons for that refusal.

34. When a public service authority agrees to a participation request, the decision notice sent to the community participation body must, under section 20, describe how the outcome improvement process will work, how the body is expected to take part in the process, and whether and how any other person (including another body or another authority) will be involved. The authority may already have established a process with which the community participation body can join in, in which case the authority must say what stage the process has reached. If a new process is to be established as a result of the request, the community participation body has 28 days to comment on that new process, under section 21(2) and (3). The public service authority has a further 28 days to provide final details of that process, taking those representations into account, and must then (under section 23) establish the outcome improvement process within 90 days, and maintain it. The authority must publish information about the process if required to do so by regulations made under section 21(6). Section 24 provides that the public service authority may modify the process, following consultation with the community participation body. If it does so, it must publish information about the modification, if required to do so by regulations.

35. When an outcome improvement process has been completed, section 25 requires the public service authority to publish a report on the process. The report must summarise the outcome of the process, including whether the outcome to which it related has been improved,
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and describe how the community participation body that made the request influenced the process and the outcomes. It must also explain how the authority will keep the community participation body and others informed about changes in the outcomes of the process and any other matters relating to the outcomes. Subsection (4) gives the Scottish Ministers power to make regulations setting out further detail about these reports and the information they are to contain.

36. Section 22 allows a public service authority to decline to consider a participation request, if a new request is made within 2 years about the same outcome relating to the same service. The new request may be declined whether it is made by the same community participation body as the previous request or by a different body.

Part 4: Community right to buy land (sections 27 to 47 – modifications of Part 2 of Land Reform (Scotland) Act 2003

Introduction


38. Part 2 of the 2003 Act provides bodies representing rural communities with rights to register an interest in land with which the community has a connection. These bodies have a right to purchase that land if the owner is willing to sell it. Part 2 of the 2003 Act sets out the land in respect of which an interest can be registered, and the procedure for registering an interest. It also sets out the circumstances in which the right to buy the land in respect of which an interest is registered arises and the procedures for exercising it (including procedures for valuation of the land, for appeals and for compensation).

Nature of land in which community interest may be registered

39. Section 27 of the Bill amends section 33 of the 2003 Act. Section 33 of the 2003 Act sets out the land in which a community body may register an interest. It provides that an interest can be registered in “registrable land”, which is anything other than “excluded land”. “Excluded land” is designated in the Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009 as land comprising the settlements listed in the order (which are all settlements of over 10,000 people). In this way, the community right to buy under the 2003 Act applies to community bodies representing rural communities.

40. Section 27(1)(a) of the Bill removes references to “registrable land” in section 33(1) of the 2003 Act which means that an interest can be registered in any land other than “excluded land”. As a result, community bodies will be able to register an interest in respect of land across Scotland, irrespective of the size of settlement.

41. Section 27(1)(b) of the Bill removes the power of the Scottish Ministers to define “excluded land” by order. It amends the definition of “excluded land” in section 33(2) of the 2003 Act to make reference to land consisting of the mineral rights to oil, coal, gas, gold or silver in which an interest cannot be registered if these rights are owned independently of the land.
42. Section 27(1)(d) of the Bill repeals subsections (3) to (7) of section 33 of the 2003 Act. Section 27(1)(c) inserts new subsection (2A) into section 33 of the 2003 Act which reflects the terms of the repealed subsection (6) to provide that a community interest may be registered in salmon fishings and mineral rights which are owned separately from the land to which those interests relate.

**Meaning of “community”**

43. Section 28 of the Bill modifies section 34 of the 2003 Act which defines a community body eligible to register an interest in land. Section 34 of the 2003 Act provides that a community body is a company limited by guarantee that meets certain criteria.

44. Section 28(2) of the Bill inserts subsection (A1) into section 34 of the 2003 Act. This extends the types of body which may be community bodies under Part 2 of the 2003 Act to include Scottish Charitable Incorporated Organisations (“SCIOs”) and any other type of body which Ministers specify in regulations. Section 28(2) also confers a power on Ministers to specify in regulations, and subsequently modify, any requirements which must be met by any such type of body.

45. Section 28(3)(c) of the Bill provides an additional requirement that must be satisfied for a company limited by guarantee to be a community body. The company’s articles of association must make provision for the minutes of meetings to be given to a person on request within 28 days of the request being made if that request is reasonable. The articles of association must also allow the community body to withhold information, provided that reasons are given for doing so.

46. Section 28(3)(d) of the Bill amends section 34(1)(h) of the 2003 Act to include reference to “Part 3A community bodies” which are provided for in the new Part 3A of the 2003 Act (inserted by section 48 of the Bill). This means that community bodies eligible to apply to purchase land under the new Part 3A of the 2003 Act are among the alternative bodies to which community bodies under Part 2 of the 2003 Act may pass their assets upon winding up in terms of their articles of association.

47. Section 28(4) of the Bill inserts new subsection (1A) into section 34 of the 2003 Act which sets out the provisions that a SCIO must include in its constitution for it to be a community body and so eligible to apply to register an interest in land under Part 2 of the 2003 Act.

48. Section 28(6) of the Bill inserts subsection (4A) into section 34 of the 2003 Act. This subsection gives Ministers the power to modify, by way of regulations, the criteria which must be met by companies limited by guarantee and SCIOs in order to be community bodies under Part 2 of the 2003 Act.

49. Section 28(6) of the Bill also inserts subsection (4B) into section 34 of the 2003 Act. This subsection gives Ministers the power to amend, by way of regulations, subsection (1) and the new subsection (A1) of section 35 of the 2003 Act (inserted by section 29 of the Bill) where Ministers have exercised the power contained in the new subsection (A1)(b) of section 34 of the 2003 Act to extend, by way of regulation, the types of bodies which may be eligible to be
community bodies under Part 2 of the 2003 Act. The power contained in subsection (4B) means that the prohibition on a community body modifying its articles of association, memorandum or constitution without the written consent of the Scottish Ministers can be amended to extend to any other kind of constitutive document which may apply to new types of body which may be community bodies as a result of the regulations made by Ministers under the new subsection (A1)(b) of section 34 of the 2003 Act.

50. Section 28(7) of the Bill amends subsection (5) of section 34 of the 2003 Act which provides for the use of postcode units in order to define the community that the community body represents. Section 28(7) of the Bill confers a power on Ministers to make regulations which prescribe other types of area with which a community may define itself.

Modification of memorandum, articles of association or constitution

51. Section 29 of the Bill amends section 35 of the 2003 Act which provides that a community body may not modify its memorandum or articles of association without Ministers’ consent whilst they hold a registered interest or own land purchased under Part 2 of the 2003 Act.

52. Section 29(2) of the Bill inserts subsection (A1) into section 35 of the 2003 Act which prohibits a community body from modifying its memorandum, articles of association or constitution without the consent of Ministers during a specified period prior to registration of an interest. Section 29(2) of the Bill also inserts subsection (A2) into section 35 of the 2003 Act which provides that the specified period starts with the day a community body submits an application for a registered interest in land and ends with the registration of interest in land, rejection of the application to register land, Ministers declining to consider the application under section 39(5) of the 2003 Act or withdrawal of the application by the community body. This means that the existing prohibition which applies whilst the interest is registered and throughout the time they own land purchased under Part 2 of the 2003 Act (in terms of subsection (1) of section 35 of the 2003 Act) is extended to the period prior to registration.

53. Section 29(3) of the Bill amends subsection (1) of section 35 of the 2003 Act to make reference to the “constitution” of a community body. This amendment takes account of the inclusion of SCIOs as bodies which may be community bodies.

Period for indicating approval under section 38 of the 2003 Act

54. Section 30 of the Bill amends section 38 of the 2003 Act which sets out the criteria which must be met before an application to register a community interest in land is approved by Ministers. Subsection (1)(d) of section 38 of the 2003 Act provides that there must be sufficient community support to justify the registration.

55. The word “substantial” is repealed in section 38(1) of the 2003 Act and so the requirement concerning community members having a substantial connection with the land that the community body is seeking to register an interest in will be amended to just refer to a connection with that land.
56. Section 30 of the Bill inserts new subsection (2A) into section 38 of the 2003 Act to preclude Ministers considering any community support that is dated earlier than 6 months before the date an application to register a community interest in land is received by Ministers.

Procedure for late applications

57. Section 31 of the Bill amends section 39 of the 2003 Act relating to the procedure for late applications. An application is deemed to be “late” when it is received by Ministers after the owner of the land to which an application relates has taken action to transfer the land but before missives are concluded, or an option to acquire is granted, in pursuance of that action.

58. Section 31(2) of the Bill rewords subsection (1) of section 39 of the 2003 Act which sets out the conditions which must be met in order for section 39 to apply.

59. Section 31(3) of the Bill inserts a new paragraph (aa) into section 39(2) of the 2003 Act. The new paragraph allows Ministers to request further information from the owner of the land or a creditor in a standard security with the right to sell the land before the end of the 7-day period following the landowner or the creditor giving their views on the application under section 37(5) of the 2003 Act. The owner of the land or the creditor must provide the information within 7 days of receipt of the request. This information is requested to ensure that Ministers have the necessary evidence on which to decide whether the application is “late”.

60. Section 31(3)(b) of the Bill modifies subsection (2)(b)(ii) of section 39 of the 2003 Act to extend the time in which Ministers have to make a decision on whether the interest should be registered in the case of a “late” application where further information is requested. Where Ministers request further information, this period will be 44 days instead of 30 days.

61. Section 31(4) of the Bill amends subsection (3) of section 39 of the 2003 Act which sets out matters on which Ministers must be satisfied, in addition to the matters set out in section 38, before approving a “late” application. Section 31(4) of the Bill removes the requirement to show “good reasons” why an application was not submitted prior to the land coming on the market and replaces it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person or such relevant steps as Ministers consider reasonable were taken by a person. Section 31(9) of the Bill inserts a new subsection (6) into section 39 of the 2003 Act to define “relevant work” and “relevant steps”.

62. Section 31(4) of the Bill also inserts paragraph (aa) into section 39(3). This sets out the timescales in which the relevant work or steps must have been taken. It is for Ministers to determine whether the relevant work or steps were carried out sufficiently in advance of the landowner taking action with a view to selling the land or giving notice that a transfer was proposed under section 48(1). The new paragraph (aa) also provides that the relevant work or steps undertaken must be in relation to the land to which the application relates or other land being used for the same purposes as the land to which the application relates. The relevant work or steps are to have been carried out by the community body or by another person with a view to the application being made by the community body. The definitions of “relevant work” and “relevant steps” are inserted as new subsection (6) of section 39 of the 2003 Act by section 31(9) of the Bill.
63. Section 31(5) of the Bill inserts a new subsection (3A) into section 39 of the 2003 Act. The new subsection (3A) allows Ministers to request further information about an application from any relevant party they deem necessary in connection with the criteria on which Ministers must be satisfied under section 39(3) of the 2003 Act. Ministers can request such information until the end of the 7-day period following receipt of the landowner’s views (or the views of a creditor in a standard security with a right to sell the land) under section 37(5) of the 2003 Act.

64. Section 31(6) of the Bill amends section 39(4)(c) which sets out the impact of an application being “late” on the community right to buy process. For the purposes of the provisions listed, the community body is deemed to have confirmed their intention to proceed with the purchase on the date on which the interest is registered. The amendment inserts a reference to the new section 60A(1) of the 2003 Act.

65. Section 31(7) of the Bill inserts a new subsection (4A) into section 39 of the 2003 Act and section 31(8) amends subsection (5) of the same. These provisions provide that where missives have been concluded in respect of the sale of land or an option conferred in respect of that land, Ministers must decline to consider the application. These amendments simplify the wording in the 2003 Act.

66. Section 31(9) of the Bill provides for a new subsection (7) of section 39 of the 2003 Act which makes it clear that the land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.

Evidence and notification of concluded missives or option agreements

67. Section 32 of the Bill inserts a new section 39A into the 2003 Act in relation to evidence and notification of concluded missives or option agreements. The new subsection (4A) and amended subsection (5) of section 39 of the 2003 Act (under section 31(7) and (8) of the Bill) provide that where an application is received after missives have been concluded in respect of the land or an option conferred, Ministers must decline to consider the application. If the application did not disclose that missives have been concluded or an option conferred then the owner of the land (or a creditor in a standard security with a right to sell) must provide evidence of concluded missives or an option agreement to Ministers within 21 days of receiving a copy of the application under section 37(5)(a). Additional information on option agreements must also be provided, namely, the date of the option agreement and whether or not and how it may be extended. If the application does disclose that missives have been concluded or an option conferred and by virtue of section 39(4A) and (5) of the 2003 Act Ministers are not required to send a copy of the application to the land owner or a creditor in a standard security with a right to sell, then section 39A(4) will apply. This requires Ministers to send a copy of the application to the land owner and any such creditor and require them to provide evidence of the concluded missives or option conferred. The land owner and creditor will also be required to provide further information about the option conferred.

Notification of transfer

68. Section 33 of the Bill amends section 41 of the 2003 Act which is supplementary to and explanatory of section 40 of the 2003 Act. Section 40 of the 2003 Act prohibits owners and certain creditors from transferring land or taking action with a view to transferring land that is
subject to a registered interest for so long as the interest is registered, other than in accordance with section 40(4) of the 2003 Act, which provides for “exempt” transfers.

69. Section 33 of the Bill inserts subsection (3) into section 41 of the 2003 Act. It requires that where an owner or a creditor in a standard security with a right to sell land makes a transfer in terms of section 40(4) of the 2003 Act, they must inform Ministers within 28 days of this taking place. The new subsection (3) of section 41 of the 2003 Act also sets out the information which the owner or creditor must provide.

**Changes to information relating to registered interests**

70. Section 34 of the Bill inserts a new section 44A into the 2003 Act, which applies where a community interest in land is registered.

71. Subsection (2) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of a community body provided in its application to register an interest, that community body must inform Ministers of that change as soon as is reasonably practicable.

72. Subsection (3) of the new section 44A of the 2003 Act requires that where any change has been made in the contact information of an owner provided in an application by a community body, the owner must inform Ministers of any changes to their contact information as soon as is reasonably practicable.

73. Subsection (4) of the new section 44A of the 2003 Act requires that the owner of the land must in certain circumstances notify Ministers of any changes to the information in an application relating to a creditor in a standard security as soon as is reasonably practicable.

74. Subsections (5) and (6) of the new section 44A of the 2003 Act require that where there is a creditor in a standard security over an interest in land to which an application relates and the application does not disclose the existence of such a creditor (either because the existence of the creditor was omitted or because it did not exist at the time the application was made), the owner must notify Ministers of the existence of the creditor and its contact details as soon as is practicable after the registration of the interest.

75. Subsections (7) and (8) of the new section 44A of the 2003 Act require that a community body or owner of land must, as soon as is reasonably practicable, make Ministers aware of any subsequent changes to any information submitted under subsections (2), (3), (4) or (6) of the new section 44A of the 2003 Act.

**Notification under section 50 of the 2003 Act**

76. Section 35 of the Bill amends section 50 of the 2003 Act. Section 50(1) sets out the circumstances in which the Lands Tribunal must notify Ministers that a landowner or creditor in a standard security with a right to sell the land has acted in breach of a prohibition notice under section 37(5)(e) or section 40(1) of the 2003 Act.
77. Section 35(a) of the Bill amends subsection (3)(b) of section 50 of the 2003 Act. It inserts reference to any creditor with a right to sell the land. This requires Ministers to send a copy of the notice from the Lands Tribunal under section 50(1) to such a creditor as well as to the owner of the land.

78. Section 35(b) of the Bill provides for a new subsection (6) to be inserted in section 50 of the 2003 Act. This sets out that a community interest in land remains in effect for the purposes of section 50(2)(c) where a community body has applied to re-register an interest under section 44(2) of the 2003 Act and the Keeper has re-entered the interest on the Register accordingly. Where a registered interest in land under consideration by the Lands Tribunal is due to expire, the relevant community body should ensure that it re-registers their interest in terms of section 44(2) of the 2003 Act. Section 50(2)(b) of the 2003 Act is repealed.

**Approval of members of community to buy land**

79. Section 36 of the Bill amends section 51(2)(a) of the 2003 Act which relates to the community’s approval of the exercise of the right to buy. Section 51(2)(a) provides that at least half of the members of the community must have voted or, if half of the members have not voted, the proportion which voted is sufficient in the circumstances to justify the community body buying the land.

80. Section 36 of the Bill removes the reference to at least half of the members of the community voting and provides that the requirement in section 51(2)(a) of the 2003 Act is met if the proportion of the members of the community who voted is sufficient to justify the community body proceeding to buy the land. Section 51(3)(a) of the 2003 Act is repealed.

**Appointment of person to conduct ballot on proposal to buy land**

81. Section 37 of the Bill inserts a new section 51A into the 2003 Act. It provides for an independent ballotter to undertake the community ballot as required under section 51(1)(a) of the 2003 Act.

82. Sections 51 and 52 of the 2003 Act provide for a ballot to be carried out by the community body. Section 37 of the Bill amends the procedure of the ballot and provides that it is to be carried out by an independent ballotter. The responsibility for appointing a ballotter and the expense of conducting the ballot are with Ministers.

83. Subsections (2) to (6) of the new section 51A of the 2003 Act set out the procedure for the conduct of the ballot. So that the ballotter has all the necessary information in order to undertake the ballot, Ministers are obliged under subsection (2) to provide the ballotter with a copy of the application under section 37 of the 2003 Act and such other information as Ministers may prescribe in regulations. Subsection (3) provides that Ministers must do this within 28 days of the valuer being appointed under section 59 of the 2003 Act. Ministers must also provide the community body with the contact details of the ballotter under subsection (4).

84. Subsections (5) and (6) of the new section 51A of the 2003 Act require that the community body must, within 7 days of receiving notification of the value of the land under
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

Section 60(2) of the 2003 Act, provide the ballotter with wording for the proposition that the community body buy the land, together with other information as set out in regulations. The other information to be set out in regulations may relate to the community body, its proposals, the valuation and other matters. The form of the notification of the other information referred to may also be set out in regulations. Section 52(2) of the 2003 Act is repealed.

**Consent under section 51 of the 2003 Act: prescribed information**

85. Section 38 of the Bill inserts a new section 51B into the 2003 Act. This section sets out the information which Ministers must take account of when deciding whether to approve a community body’s exercise of the right to buy.

86. The new section 51B of the 2003 Act confers a power on Ministers to specify the type of information which a community body must provide in regulations, including, in particular, information relating to the matters referred to in subsection (3) of section 51 of the 2003 Act. Subsection (3) of the new section 51B of the 2003 Act requires that the information must be provided in a form set out by Ministers in regulations. Ministers can also take account of any information which they consider to be relevant, regardless of whether it is of the type specified in regulations.

87. Subsection (5) of the new section 51B of the 2003 Act provides that Ministers have 7 days from receipt of information to request further information. Furthermore, in terms of subsection (6) of the new section 51B of the 2003 Act, the community body has 7 days from the receipt of such a request to provide Ministers with the information.

**Representations etc. regarding circumstances affecting ballot results**

88. Section 39 of the Bill inserts a new section 51C into the 2003 Act which sets out a process for where a community body considers that circumstances have affected the ballot result.

89. Subsection (1) of the new section 51C allows the community body, within 7 days of receiving notification of the result of the ballot, to make representations to Ministers on circumstances that the community body considers impacted the ballot result.

90. Subsection (2) requires the community body to provide Ministers with such evidence as is reasonably necessary to establish the existence and effect of the circumstances that affected the ballot result. A copy of the evidence and representations must be sent to the owner of the land by the community body. Subsection (3) allows Ministers to request further information if required and the community body must respond within 7 days under subsection (4).

91. Subsection (5) provides that the owner of the land may provide comments in connection with the representations and evidence provided by the community body within 7 days of receiving copies of such representations and evidence. The owner of the land must send copies of any comments to the community body (subsection (6)). The community body may give their views to Ministers on the owner of the land’s comments (subsection (7)).
92. Subsection (8) provides that Ministers may request further information from the community body and, in terms of subsection (9), the community body must respond within 7 days.

93. Subsection (10) provides that Ministers must take account of any of the representations, evidence, information, comments or views which have been provided in this process when considering whether the ballot turnout requirement under section 51(2)(a) of the 2003 Act has been met.

94. Due to the administrative steps which have been provided for, section 39(2) of the Bill amends section 51 of the 2003 Act to extend the length of the period in which Ministers must decide whether to consent to the exercise of the right to buy from 21 days to 35 days in cases where representations have been made under section 51C(1).

**Ballot not conducted as prescribed**

95. Section 40 of the Bill amends section 52 of the 2003 Act. Section 52(1) of the 2003 Act provides that a ballot should be conducted as prescribed in regulations. Furthermore, in terms of section 52(2), if a ballot is deemed to be flawed, the community’s right to buy is extinguished.

96. Section 40 of the Bill provides that section 52 of the 2003 Act is amended to include a new subsection (7). The new subsection (7) provides Ministers with the powers to make regulations in connection with reviewing whether a ballot has been properly conducted and other matters relating to ballots not conducted as prescribed.

**Period in which ballot results and valuations are to be notified**

97. Section 41 of the Bill amends section 52(4) of the 2003 Act which provides the timescale for the conduct of the ballot and section 60 which provides the timescale for notification of the valuation figure.

98. Section 52(4) of the 2003 Act provides that the ballot is to take place within 28 days of the notification of the value of the land under section 60(2) and the ballot date is determined by the date of that notification. Section 41(1) of the Bill amends section 52(4) of the 2003 Act to provide that the ballot takes place within the 12 week period beginning on the date the valuer is appointed under section 59(1) of the 2003 Act. Alternatively, in cases where the valuation period has been extended on application by the valuer under section 60(3) of the 2003 Act and the date to which the valuation period has been extended to is after the 12-week period following the appointment of the valuer, the 12-week period begins on the day following the notification of the date under section 60(3C) of the 2003 Act. This means that the ballotter will in all cases have a minimum of 12 weeks to conduct the ballot and notify Ministers of the results.

99. Section 41(2) of the Bill provides that section 60 of the 2003 Act is amended to insert new subsections (3A) to (3D). These provisions detail the procedure of when and how the valuer is able to seek an extension to the timings for reporting the value of the land to parties set out in section 60(2). The community body, the landowner and the ballotter must be informed of the existence of any extension, the length of any extension and the end period for the extension.
Exercise of right to buy: date of entry and payment of price

100. Section 42 of the Bill amends section 56 of the 2003 Act which sets out the time limits which apply to a community body in respect of payment of the price for the land.

101. Subsection (3) of section 56 of the 2003 Act provides that where the valuation figure is not being appealed under section 62 of the 2003 Act and where the time limit has not been extended by agreement, the price must be paid within 6 months of the date on which the community body confirmed its intention to proceed with the community right to buy in response to a notice under section 49(2)(a) of the 2003 Act or, in the case of a late application, within 6 months of the date of Ministers decision to register that interest in land. Section 42(a) of the Bill extends this time period from 6 months to 8 months.

102. Section 42(b) of the Bill provides for a new subsection (7) in section 56 of the 2003 Act. Where an extension to the 8-month period provided for in the amended section 56(3)(a) of the 2003 Act is required (such extension being permitted by section 56(3)(c) of the 2003 Act), the extension must be agreed, by both parties (landowner and community body), before the 8-month period ends. The community body must notify Ministers of any extension within 7 days of that agreement being made, including when that agreement was made and what that later extended date is. Evidence of such an agreement will be required by Ministers.

Views on representations under section 60 of the 2003 Act

103. Section 43 of the Bill amends section 60 of the 2003 Act, subsection (1) of which requires the valuer to invite the landowner and the community body to comment on issues that may have an impact on the valuation.

104. Section 43 of the Bill inserts a new subsection (1A) into section 60 of the 2003 Act which imposes an obligation on the valuer to pass on any written representations about the value of the land, whether by the landowner or the community body, to the other party and invite counter-representations from that party. The valuer must consider any views made by both or either party while undertaking the valuation under section 59 of the 2003 Act.

Circumstances where expenses of valuation to be met by owner of the land

105. Section 44 of the Bill inserts a new section 60A into the 2003 Act. The new section 60A provides that, in certain circumstances, Ministers may require the landowner to pay the expenses of Ministers in connection with the valuation.

106. Subsection (1) of the new section 60A sets out the circumstances in which Ministers may exercise their discretion and require the landowner to pay the expenses incurred by Ministers in connection with the valuation.

107. Subsection (2) sets out that Ministers have a discretion to require the landowner to meet the costs associated with the valuation where the circumstances in subsection (1) are met. Where Ministers exercise their discretion, a demand for payment will be sent to the landowner.
108. Subsection (3) allows Ministers to request information from the landowner before deciding whether to exercise their discretion.

109. Subsection (4) provides that the landowner may appeal Ministers’ decision to exercise their discretion to the sheriff within 21 days of the Ministers’ decision. In terms of subsection (5), the sheriff’s decision is final.

110. Subsection (6) provides that, where the landowner has not appealed the Ministers’ decision, the landowner must pay the amount specified within 28 days of receiving the demand. Where the landowner appeals the Ministers’ decision and the appeal is not successful, the landowner must pay the amount within 28 days of the determination of the appeal.

**Creditors in standard security with right to sell land: appeals**

111. Section 45 of the Bill amends section 61 of the 2003 Act. Section 61 provides a right of appeal to the sheriff for the landowner, the community body and other interested parties in respect of certain decisions by Ministers. In terms of section 48(4) of the 2003 Act, where there is a creditor with a right to sell the land and that creditor gives notice of a proposal to sell the land under section 48(1), the creditor would also have a right of appeal.

112. Section 45(a) of the Bill expands the interested parties to include a “creditor in a standard security with a right to sell land” in all cases (including where the creditor has not given notice of a proposal to sell the land under section 48(1) of the 2003 Act). Section 45(b) and (c) of the Bill amend the remaining sections of section 61 of the 2003 Act to take account of the creditor’s right of appeal. The words “or” to “person” in section 61(3) of the 2003 Act are repealed.

**Calculation of time periods in Part 2 of 2003 Act**

113. Section 46(1) of the Bill inserts a new section 67A into the 2003 Act which provides that public or local holidays are not to be taken into account when calculating time periods in Part 2 of the 2003 Act.

114. New section 67A(2) of the 2003 Act provides a number of exceptions to the rule provided in new section 67A(1) – statutory periods for the date of entry, the valuation process and any appeals are not to be extended if a public or local holiday falls during the time when these steps are active.

**Duty to provide information about community right to buy**

115. Section 47 of the Bill inserts a new section 67B into the 2003 Act concerning the monitoring of community right to buy.

116. Inserted section 67B(1) and (2) of the 2003 Act provide that a community body, owner or former owner of land in respect of which an application to register an interest was made may be requested by Ministers to provide information, for the purposes of monitoring or evaluating any impacts that the right to buy land conferred by Part 2 of the 2003 Act has had or may have.
117. Inserted section 67B(3) of the 2003 Act sets out the type of information that may be requested by Ministers. It provides that it is any information which Ministers may reasonably require for the purpose of monitoring or evaluating the impact of the right to buy under Part 2 of the 2003 Act. Where a request has been made by Ministers, the recipient must comply to the extent that they are able to do so (inserted section 67B(4)).

**Part 4: Community right to buy land (section 48 – abandoned and neglected land)**

*Introduction*

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

*Meaning of land*

119. The new section 97B of the 2003 Act provides that land for the purposes of Part 3A of the 2003 Act includes bridges and other structures built on or over land, inland waters, canals, and the foreshore (which is the land between the high and low water marks of ordinary spring tides).

*Eligible land*

120. The new section 97C of the 2003 Act defines land which is to be classed as eligible for the purposes of Part 3A of the 2003 Act. Subsection (1) provides that eligible land is land which is wholly or mainly abandoned or neglected in the opinion of Ministers.

121. Subsection (2) requires Ministers to make regulations setting out what factors they must have regard to when deciding whether land is, in their opinion, wholly or mainly neglected or abandoned.

122. Subsection (3) provides that eligible land does not include certain land. Land which is not eligible includes land on which there is an individual’s home (exceptions may be set out in regulations by Ministers); land pertaining to an individual’s home as may be set out in regulations, eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family; land which is owned by the Crown by virtue of it having vested as *bona vacantia* (because no owner exists or can be identified) or it having fallen to the Crown as ultimus haeres (because no heir to the previous owner exists or can be identified); and land of such other descriptions that Ministers may set out in regulations.

**Part 3A community bodies**

123. The new section 97D of the 2003 Act outlines the requirements which must be met by a body so that it is eligible to purchase land under Part 3A of the 2003 Act.

124. Subsection (1) specifies that a Part 3A community body must be a company limited by guarantee. It also lists the requirements which must be included in the company’s articles of association. If a body does not meet the conditions imposed by subsection (1), it will not be a
Part 3A community body and so will not be eligible to purchase land under Part 3A of the 2003 Act. However, in terms of subsection (2), Ministers have discretion over the minimum number of members a Part 3A community body must have.

125. Subsection (3) defines a “company limited by guarantee” by reference to section 3(3) of the Companies Act 2006 as being a company having the liability of its members limited to such amount as the members undertake to contribute to the assets of the company in the event of it being wound up.

126. Subsection (4) provides that a Part 3A community body is not defined as such until Ministers give their written consent that they are satisfied that the body’s main purpose is consistent with furthering the achievement of sustainable development.

127. Subsection (5)(a) sets out that the articles of association of the company must define the community to which it relates by reference to a postcode unit (or units) or a type of area which Ministers set out in regulation. A community may also be defined with reference to both of these things. Subsection (5)(b) provides that the community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulations. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations.

128. Subsection (7) specifies that the articles of association of a Part 3A community body may provide that its property may, in circumstances outlined in subsection (1)(h), pass to another person only if that person is a charity. Subsection (8) defines a charity for the purposes of this section as a body which is entered in the Scottish Charity Register.

Provisions supplementary to section 97D

129. The new section 97D of the 2003 Act sets out the constraints which apply to a Part 3A community body after it has acquired land under Part 3A of the 2003 Act.

130. Subsection (1) provides that a Part 3A community body cannot change its memorandum or articles of association without prior consent from Ministers in writing, while the land bought under Part 3A of the 2003 Act remains in its ownership.

131. Subsection (2) allows Ministers to acquire the land compulsorily if a Part 3A community body, which has bought land under Part 3A of the 2003 Act, would no longer be entitled to buy the land.

132. Subsection (3) provides that Ministers cannot exercise their powers under subsection (2) to acquire the land compulsorily if the land is no longer considered to be eligible. This means that Ministers will not be able to exercise their powers on the basis that a Part 3A community body has purchased the land and the land is no longer considered by Ministers to be wholly or mainly abandoned or neglected.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

133. Subsection (4) provides that where Ministers exercise the power conferred by subsection (2), they may make an order in relation to acquiring the land. Subsection (4) sets out the scope of any such order.

Register of Community Interests in Abandoned or Neglected Land

134. The new section 97F of the 2003 Act provides for the creation of a Register of Community Interests in Abandoned or Neglected Land.

135. Subsection (1) requires the Keeper of the Registers of Scotland (“the Keeper”) to set up and maintain a Register of Community Interests in Abandoned or Neglected Land (“the Register”).

136. Subsection (2) specifies information and documents which must be kept in the Register and provides that these must be kept in a form convenient for public inspection.

137. Subsections (3) and (4) allow a Part 3A community body to require that information or documentation which relates to the raising or expenditure of money to allow land to which the application relates to be used should be withheld from public inspection. Such information or documentation will not be entered in the Register. However, in terms of subsection (5), Ministers cannot require a Part 3A community body to provide such information or documentation.

138. Subsection (6) confers powers on Ministers to make regulations to amend the information that is to be made publicly available in the Register, to amend the provision about the Part 3A community body requesting that certain information can be withheld from the Register and amending the type of information that may be withheld.

139. Subsection (7) sets out the duties which are imposed on the Keeper. The Keeper must make the Register available at all reasonable times for inspection free of charge, ensure that members of the public are able to request copies of the entries on payment of a charge as may be set out by Ministers in regulations, and that if anyone requests a true copy of the original document this will be supplied on payment of such a charge.

140. Subsection (9) provides that the Keeper means the Keeper of the Registers of Scotland or such person as Ministers appoint to carry out the Keeper’s functions under Part 3A of the 2003 Act (and under subsection (10) different persons may be appointed in place of the Keeper for different purposes under Part 3A of the 2003 Act).

Right to buy: application for consent

141. The new section 97G of the 2003 Act deals with the process of applying to exercise the right to buy land under Part 3A of the 2003 Act.

142. Subsection (1) provides that the right to buy abandoned or neglected land can only be exercised by a Part 3A community body. Subsection (2) specifies that the right can only be exercised with Ministers’ consent on the written application of the Part 3A community body.
143. Subsection (3) provides that a right to buy land can be exercised on multiple holdings, but separate applications must have been made for each holding of land. A holding of land is defined in subsection (4) as being a plot of land owned by one person or in common or joint ownership. Ministers may consider and make a decision on these applications separately from one another.

144. Subsection (5) specifies that an application must set out who the owner of the land is and any creditor in a standard security with a right to sell the land or any part of it. Ministers must set out the required form of the application in regulations. The application must also include or be accompanied by information of the kind specified by Ministers in regulations.

145. Subsection (6) lists the matters which the Part 3A community body must include in the application or which must accompany the application. These include why a Part 3A community body’s proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development, and the reasons why it considers the land to be wholly or mainly abandoned or neglected.

146. Subsection (7) specifies that at the same time as the Part 3A community body applies to Ministers, it must send a copy of its application form (including the associated material) to the owner of the land. It also requires the Part 3A community body to send a copy of the application to any known creditor in a standard security over the land with a right to sell and invite them to give notice, within 60 days, to the Part 3A community body and Ministers if the creditor has taken the steps mentioned in subsection (8) to enforce the security. If such notice is given, creditors must provide any views or comments they may have about the application to Ministers in writing within the 60-day period.

147. Subsection (9) provides that upon receiving the application under section 97G, Ministers must invite the owner of the land, any creditor in a standard security and any other person that may have an interest in the application to send back written comments on the application within 60 days of the Ministers’ invitation. Ministers must also take reasonable steps to invite comments from owners of land adjacent to the land to which the application relates. The community body must be sent copies of such invitations.

148. Subsection (10) specifies the additional matters which the invitation must invite the landowner to provide comment on.

149. Subsection (11) provides that Ministers must give public notice of receipt of the application as soon as practicably possible and invite views within 60 days of the publication of the notice. Subsection (12) confers a power on Ministers to make regulations to specify the form of the advertisement giving public notice of the application.

150. Subsection (13) provides that Ministers must pass all views received on to the Part 3A community body for further comment. The community body’s comments must be received within 60 days of Ministers sending the invitation to comment.
151. Subsection (14) provides that when considering whether or not to give consent to the application, Ministers must have regard to all views received with regard to the application.

152. Subsection (15) provides that Ministers must decline to consider an application that does not comply with the requirements of the new section 97G, is incomplete or where Ministers are otherwise bound to reject it. If such is the case, then Ministers are not bound to follow the steps laid out in subsection (9) to (14).

153. Subsection (16) sets constraints on the timing of the Ministers’ decision on an application. It provides that Ministers must not make any decision on the application before the end of the 60-day period within which a community may respond to a landowner’s comments, under subsection (13). Alternatively, if by the date of 60 days after the date on which the Part 3A community body may provide Ministers with a response to an invitation sent under subsection (13), the Lands Tribunal has not notified Ministers of any finding under new section 97X of the 2003 Act, Ministers must not make a decision until the date on which the Lands Tribunal provides Ministers with that finding.

Criteria for consent

154. The new section 97H of the 2003 Act sets out that Ministers must not consent to a Part 3A community right to buy unless they are satisfied about the matters listed in the section.

155. Paragraph (a) requires Ministers to be satisfied that the land a Part 3A community body is proposing to buy is land which is eligible under the new section 97C of the 2003 Act.

156. Paragraph (b) requires Ministers to be satisfied that the exercise of the right to buy by a Part 3A community body is in the public interest and its plans for the land are compatible with furthering the achievement of sustainable development.

157. Paragraph (c) requires Ministers to be satisfied that if the owner of the eligible land was to remain the owner, it would be inconsistent with furthering the achievement of sustainable development of the land.

158. Paragraph (f) requires Ministers to be satisfied that the owner of the land is not prevented from selling the land or is not under an obligation to sell the land to someone other than the Part 3A community body (other than an obligation which is suspended by the regulations which are to be made by Ministers under the new section 97N(3)).

159. Paragraph (g) requires Ministers to be satisfied that a Part 3A community body meets the requirements in section 97D.

160. Paragraph (h) requires Ministers to be satisfied that a significant number of the members of the community which the Part 3A community body represents have a connection with the land or the land is sufficiently near to land to which those members of the community have a connection.
161. Paragraph (i) requires Ministers to be satisfied that the community which the Part 3A community body represents has approved the proposal to exercise the right to buy under Part 3A. The new section 97J of the 2003 Act provides that the community is taken as having approved the proposal if a ballot is conducted as set out in that section.

162. Paragraph (j) requires Ministers to be satisfied that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.

**Ballot to indicate approval for purposes of section 97H**

163. The new section 97J of the 2003 Act sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its community.

164. Subsection (1) provides that a proposal by a Part 3A community body to exercise a community right to buy will be deemed to have been approved by the relevant community, if, firstly, the ballot takes place within the six-month period immediately preceding the date of the right to buy application; secondly, that at least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land; and finally, that the majority of the votes cast were in favour of making the application.

165. Subsection (2) provides that the ballot must be conducted as prescribed by Ministers in regulations. Subsection (3) sets out the matters which must be prescribed in those regulations.

166. Subsection (4) specifies that the Part 3A community body must notify Ministers of the result within 21 days of the ballot or, where the application is made before the expiry of that 21-day period, at the same time as the application is submitted. This subsection also sets out what information about the ballot the community body must provide to Ministers.

167. Subsection (5) provides that Ministers may require a Part 3A community body to provide further information about the ballot or any consultation that the community body may have held with the wider community about their application.

168. Subsection (6) provides that the Part 3A community body is responsible for the expense of conducting the ballot.

169. Subsection (7) provides that where a ballot is not conducted in accordance with the regulations made by Ministers, the Part 3A community body’s right to buy will be extinguished.

**Right to buy same land exercisable by only one Part 3A community body**

170. The new section 97K of the 2003 Act deals with the situation where there is more than one Part 3A community body interested in buying the same land.

171. Subsection (1) provides that only one Part 3A community body may exercise the right to buy that land.
172. Subsection (2) provides where more than one Part 3A community body submits an application seeking to buy the same land, Ministers will decide which application should be allowed to proceed.

173. Subsection (3) provides that Ministers must not take any decision on any of the applications before they have considered all views and responses related to each application.

174. Subsection (4) provides that once Ministers have decided which Part 3A community body’s right to buy application shall be allowed to proceed, the other community body’s right to buy shall be extinguished. It also specifies who must be notified of Ministers’ decision.

Consent conditions

175. The new section 97L of the 2003 Act provides that Ministers may impose conditions to their consent to an application to exercise the Part 3A community right to buy. These conditions may, for example, require that certain actions or steps must be taken by the Part 3A community body.

Notification of Ministers’ decision on application

176. The new section 97M of the 2003 Act sets out how Ministers must notify the relevant parties of their decision to consent to or refuse an application.

177. Subsection (1) provides that Ministers must give notice in writing of their decision to consent to or refuse an application under section 97G to exercise the Part 3A community right to buy, and identifies the persons to whom such notice must be given. The form of the notice is to be set out in regulations.

178. Subsection (2) provides that regulations made by Ministers must require that the notice includes a full description of the land covered by the Ministers’ decision and, where consent is given, any conditions imposed by Ministers.

179. Subsection (3) specifies that the notice must contain information about the consequences of the decision and the rights of appeal against it and state the date on which the consent is given.

Effect of Ministers’ decision on right to buy

180. The new section 97N(1) of the 2003 Act gives Ministers powers to make regulations prohibiting certain persons from transferring or otherwise dealing with the land in respect of which an application under section 97G has been made.

181. Subsection (2) sets out matters that the regulations under subsection (1) may include.

182. Subsection (3) provides that Ministers may make regulations to suspend rights over land in respect of which a Part 3A application has been made. Subsection (4) sets out that these regulations may provide for rights which will not be suspended, as well as rights which will not be suspended in certain circumstances.
183. Subsection (5) provides that nothing in Part 3A of the 2003 Act prejudices the position of creditors seeking to prevent the disposal of heritable property by a debtor by means of inhibition, action of adjudication or any other diligence.

**Confirmation of intention to proceed with purchase and withdrawal**

184. The new section 97P of the 2003 Act sets out the procedure which follows Ministers consenting to the exercise of a right to buy by a Part 3A community body, depending on whether or not the community body wishes to proceed with the purchase.

185. Subsection (1) provides that a Part 3A community body may exercise its right to buy only if, within 21 days of the valuer notifying Ministers, the Part 3A community body and the owner of the assessed value of the land under 97S(10), the Part 3A community body sends written notice to Ministers and the owner confirming its intention to proceed to buy the land.

186. Subsection (2) provides that, by notice in writing to Ministers, the Part 3A community body may withdraw its right to buy application or its confirmation of its intention to proceed with the purchase at any time.

187. Subsection (3) specifies the action to be taken by Ministers on receipt of such notices.

**Completion of purchase**

188. The new section 97Q of the 2003 Act deals with conveyancing practicalities relevant to the transfer of land following Ministers giving consent to a Part 3A community right to buy application.

189. Subsection (1) provides that the Part 3A community body will be responsible for preparing the documents necessary to effect the conveyance of the land and for ensuring that the subjects to be conveyed are the same as those specified in the consent given by Ministers. It places an obligation on the Part 3A community body to ensure that in preparing the documents it takes account of all conditions imposed by Ministers.

190. Subsection (2) provides that where the Part 3A community body cannot comply with its duty regarding the property to be conveyed, due to the fact that all or part of the land covered by the consent to the Part 3A community right to buy is not owned by the person named as owner in the application, then it must refer this matter to Ministers.

191. Subsection (3) provides that where such a reference is made to Ministers under subsection (2) then Ministers must direct that the right to buy is extinguished.

192. Subsection (4) requires the owner of the land subject to the Part 3A right to buy to make title deeds and other documents available to and transfer title to the Part 3A community body.

193. Subsection (5) provides that if, within 6 weeks of Ministers consenting to the application to buy the land, the owner refuses or fails to make these deeds available, or if they cannot be
found, the Part 3A community body can apply to the Lands Tribunal for an order requiring the production of those documents.

194. Subsection (6) provides that the Part 3A community body may apply to the Lands Tribunal to authorise its clerk to effect the transfer of title where the owner refuses, or for other reasons fails, to do so. Where the clerk to the Tribunal does so the effect will be the same as if it were done by the owner.

Completion of transfer

195. The new section 97R of the 2003 Act sets out the process for completing the transfer.

196. Subsection (1) provides that the consideration payable for the land in respect of which the Part 3A community right to buy is exercised shall be the value of that land as assessed under section 97S by the valuer appointed by Ministers.

197. Subsection (2) provides that, subject to subsections (3) and (4), the consideration should be paid not later than 6 months after the date on which Ministers consented to the right to buy application.

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

199. Subsection (4) specifies that where the owner is unable to grant a good and marketable title to the Part 3A community body by the date of payment, then payment shall be made to and held by the Lands Tribunal pending either completion of the conveyance or notification to the Lands Tribunal by the Part 3A community body that it has decided not to complete the transaction.

200. Subsection (5) specifies that if the consideration is not paid by the Part 3A community body by the due date, the right to buy application will be deemed to have been withdrawn by the Part 3A community body (this subsection does not apply where subsection (4) applies).

201. Subsection (6) provides that when the Part 3A community body records or registers its title, the land acquired is disburdened of any heritable security.

202. Subsection (7) provides that a security that related to the land acquired through the Part 3A community right to buy and to other land continues to apply to that other land.

203. Subsection (8) provides that where land is disburdened of a heritable security on purchase, unless the creditors otherwise agree, the Part 3A community body must pay the creditors under that heritable security whatever sums are due to them.
204. Subsection (9) provides that the Part 3A community body must deduct any sums paid to a heritable creditor under the provisions of subsection (8) from the amount that the body is due to pay the owner for the land. In effect, the landowner will receive a sum for the land which will take account of the sum required to clear any securities.

**Assessment of value of land etc.**

205. The new section 97S of the 2003 Act sets out the procedure for valuation of the land in respect of which a Part 3A community body is exercising its right to buy.

206. Subsection (1) requires that Ministers, where they have consented to a Part 3A community right to buy application, must appoint a valuer to assess the value of that land within 7 days of that consent.

207. Subsection (2) provides that the validity of anything done under the new section 97S will not be affected by Ministers’ failure to comply with the time limit specified in subsection (1).

208. Subsection (3) sets out the role of the valuer.

209. Subsection (4) specifies that the value to be ascertained is the market value at the date Ministers consented to the application to exercise the right to buy.

210. Subsection (5) defines market value as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in the value of other land and interests belonging to the seller as a result of the forced sale, and compensation for any disturbance to the seller resulting from the forced sale.

211. Subsection (6) specifies that in arriving at the open market value for the purposes of subsection (5)(a), account may be taken of the known existence of a potential purchaser with a special interest in the property (other than the Part 3A community body). It also specifies that no account shall be taken of the fact that no time was allowed for marketing the property or of the depreciation of other land or disturbance (since compensation for these latter two items will be added to the open market value by virtue of subsection (5)(b) and (c)).

212. Subsection (7) states that Ministers shall pay for the valuation under this section.

213. Subsection (8) requires the valuer to ask both the owner and the Part 3A community body for their views in writing on the value of the land and to take these representations into account in arriving at the valuation.

214. Subsection (9) specifies that where the Part 3A community body and the owner have agreed the valuation, they must notify the valuer in writing of that valuation.

215. Subsections (10) and (11) require the appointed valuer to notify Ministers, the landowner and the Part 3A community body of the valuation. This must be done within 8 weeks of being appointed or within a longer period set by Ministers, as requested by the valuer.
216. Subsection (12) sets out that the validity of the transfer is not affected by a failure by the valuer to comply with the time limit.

**Compensation**

217. The new section 97T of the 2003 Act provides for payment of compensation in connection with an application to exercise the Part 3A community right to buy. It provides that the compensation will be payable by the Part 3A community body except where Ministers have refused the application, in which case the compensation due to the owner of the land will be paid by Ministers.

218. Subsection (1) specifies the circumstances in which eligibility for compensation will arise.

219. Subsection (2) provides that the Part 3A community body will not be liable to pay compensation when a Part 3A community right to buy application is made but is not approved by Ministers.

220. Subsection (3) specifies that, in the circumstances covered by subsection (2), compensation for certain losses and expenses can be recovered from Ministers.

221. Subsection (4) provides that Ministers may make an order specifying the amounts payable in respect of loss or expense, who is liable to pay those amounts, and how any compensation is to be claimed under the new section 97T.

222. Subsection (5) provides that if the parties cannot agree whether compensation is payable or the amount of such compensation within the timescale specified in the order, then either party may refer the matter to the Lands Tribunal.

**Grants towards Part 3A community bodies’ liabilities to pay compensation**

223. The new section 97U provides that Ministers may, in certain limited circumstances, pay a grant to a Part 3A community body to assist it in meeting the compensation it has to pay in connection with its exercise of a right to buy.

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

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

226. Subsection (5) provides that a grant may be paid only if the Part 3A community body applies for it, and subsection (6) provides that the form of the application and the application procedure shall be as Ministers specify in regulations.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

227. Subsection (7) provides that Ministers must issue their decision on an application for a grant in writing and, where that decision is to refuse to pay a grant, include the reasons for that refusal. Subsection (8) provides that Ministers’ decision on whether to pay a grant or not is final.

**Appeals**


229. Subsections (1), (4) and (5) provide that the landowner, a person who is a member of the community to which a Part 3A community body relates and a creditor in a standard security with a right to sell land to which an application relates may appeal against the Ministers’ decision to consent to the application, while subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application. Where there is more than one Part 3A community body wishing to purchase the land, subsection (3) provides that Ministers’ decision on which community body’s application will proceed is final and cannot be appealed to the sheriff.

230. Subsection (6) specifies the timeframe within which an appeal may be made.

231. Subsection (7) specifies that the sheriff court with the jurisdiction to hear an appeal is the sheriff court where the land subject to an appeal is located.

232. Subsection (8) specifies who each appellant must inform when an appeal is made.

233. Subsection (9) provides that the sheriff’s decision is final and may require rectification of the Register of Community Interests in Abandoned or Neglected Land and may impose conditions on the appellant.

**Appeals to Lands Tribunal: valuation**

234. The new section 97W of the 2003 Act sets out the rights of appeal to the Lands Tribunal in connection with the valuation which is carried out under the new section 97S.

235. Subsection (1) provides that the owner of the land and the Part 3A community body exercising its right to buy may appeal the valuation to the Lands Tribunal.

236. Subsection (2) requires such an appeal to state the grounds of the appeal and that it be lodged within 21 days of valuation being notified under section 97S(10).

237. Subsection (3) provides that the Lands Tribunal may reassess the valuation of the land.

238. Subsection (4) provides that the valuer may be a witness in the appeal proceedings.

239. Subsection (5) requires the Lands Tribunal to give reasons for its decision on an appeal.
240. Subsection (6) provides that Ministers are not competent parties to any appeal by reason only that they appointed the valuer.

241. Subsection (7) provides that Ministers’ powers under the Lands Tribunal Act 1949 to make rules are extended so that Ministers can make any rules necessary or expedient in connection with Part 3A.

Reference to Lands Tribunal of questions on applications

242. The new section 97X sets out rights of appeal to the Lands Tribunal on a question relating to the Part 3A application.

243. Subsection (1) provides that at any time before Ministers make a decision on an application, any question relating to the application may be referred to the Lands Tribunal by Ministers, the landowner, a person who is a member of the community to which the Part 3A community body relates, any person with an interest in the land giving rise to a legally enforceable right (e.g. a creditor in a standard security with the right to sell land) or any other such person invited to send views on a Part 3A application (under section 97G(9)(a)(iii)).

244. Subsection (2) provides that the Lands Tribunal may consider the views of the Part 3A community body, the owner of the land subject to the Part 3A application and any other person that the Lands Tribunal determines have an interest in the case.

245. Subsection (3) provides that the Lands Tribunal must inform Ministers of its findings on any of the questions referred to it and may, by order, provide for Ministers to consent to an application under the new section 97L only if they impose certain conditions, as directed by the Lands Tribunal.

246. Subsection (4) provides that if the Lands Tribunal finds that the question on the application is not relevant to the Ministers’ decision, the Lands Tribunal may decide not to consider the question further and find accordingly.

Agreement as to matters referred or appealed

247. The new section 97Y of the 2003 Act provides that parties to the Part 3A application are not prevented from settling or agreeing on the matter which is subject to an appeal under sections 97V or 97W between them.

Interpretation of Part 3A

248. The new section 97Z sets out some matters of interpretation.

249. Subsection (1) provides that any reference to a creditor in a standard security with a right to sell land is a reference to a creditor who has such rights under section 20(2) or 23(2) of the Conveyancing and Feudal Reform (Scotland) Act 1970, or a warrant granted under section 24(1) of that Act.
Subsections (2) and (3) provide that public or local holidays should not be taken into account when calculating time periods in Part 3A, except for the 6 month period of completion for the right to buy, the 28-day period for a right of appeal to the sheriff and the 21-day period for a right of appeal to the Lands Tribunal on the valuation.

**Part 5: Asset transfer requests**

This Part sets out how a “community transfer body” can request to buy, lease, manage, occupy or use land or buildings belonging to a “relevant authority”, how the authority is to decide whether to agree to or refuse the request, and the procedures to be followed if the request is agreed.

Throughout this Bill (except where it amends other legislation) “land” has the meaning set out in the Interpretation and Legislative Reform (Scotland) Act 2010, which is that ““land” includes buildings and other structures, land covered with water, and any right or interest in or over land”.

**Community transfer body**

Section 50 defines a “community transfer body”. This is either a community-controlled body, as defined in section 14, or a body designated as a community transfer body by the Scottish Ministers. The Scottish Ministers may designate individual bodies to be community transfer bodies or may designate a whole class of bodies, so that any body of that type will qualify as a community transfer body. Subsection (3) states that where a trust is designated, the designated body will be the trustees, since a trust is not incorporated.

**Relevant authority**

A “relevant authority” is defined by section 51. This may be a person (or organisation) listed in schedule 3, or one designated as a relevant authority by the Scottish Ministers. Schedule 3 includes local authorities, the Scottish Ministers, Health Boards, and certain other Scottish public bodies, which have been selected because they own significant amounts of land and buildings.

The remainder of section 51 gives the Scottish Ministers a power to remove or amend any entry on the list, or to make an order designating other bodies or classes of bodies as public service authorities. Subsection (4) provides that persons may only be designated if they fall into the following categories:

- part of the Scottish Administration, which has the meaning given in section 126(6) to (8) of the Scotland Act 1998;
- “Scottish public authorities with mixed functions or no reserved functions under the Scotland Act 1998” – this means that UK Government Departments and public bodies that deal with matters reserved to the UK Government cannot be included;
- companies wholly-owned by relevant authorities.
Asset transfer requests

256. Section 52 sets out how an asset transfer request can be made. It must relate to land (which includes buildings) owned or leased by a relevant authority. The community transfer body may ask to have ownership of the land transferred to it, if the land is owned by the relevant authority; it may ask to lease the land from the relevant authority; or to obtain other rights in respect of the land, for example to manage or use it for a specified purpose.

257. Subsection (4) sets out the information which must be included in the request. In addition to specifying the land (or building) to which the request relates, and whether the request is for ownership, lease or other rights, the community transfer body must describe the reasons for making the request and the benefits which it considers will arise if the request is agreed to. It must also state how much the body would be prepared to pay, either to buy the land or in rent, and any other terms and conditions that would apply to the request.

258. Section 52(3) provides that a request for transfer of ownership of land may only be made by a community transfer body which meets the criteria set out in section 53, in addition to being covered by section 50. This means it must be a company, or a Scottish Charitable Incorporated Organisation (SCIO), or a body designated as a community transfer body under section 50, where the designation states that the body may make a request for transfer of ownership. Classes of bodies may also be designated as eligible to make a request for transfer of ownership.

259. If a company is to meet the criteria to request transfer of ownership, section 53(2) requires that it must have at least 20 members, and provision in its articles of association to ensure that, on winding up, any remaining property remains within either the community sector or the charitable sector. If the company has registered an interest in or has acquired land under the Land Reform (Scotland) Act 2003, its winding up provisions will need to satisfy the requirements of that Act. Subsection (2)(b)(iii), (iv) and (v) replicate those requirements, so that a company can be both a community transfer body and a community body under Part 2 of the Land Reform (Scotland) Act 2003 or a crofting community body under Part 3 of that Act. If the company is registered as a Scottish charity, the requirements for registration mean that any surplus property must be applied for charitable purposes, as in subsection (2)(b)(ii), so a charitable company can also be a community transfer body. If the company does not need to meet either of those requirements, it may choose to use any of the options in paragraph (b).

260. In order to be registered as a SCIO, a body is required to have appropriate provision in its constitution for surplus property to be distributed for charitable purposes. Therefore, the only additional requirement for a SCIO to be able to make an asset transfer request for ownership of land is that it has at least 20 members, which is provided for in section 53(1)(b).

Regulations

261. A community transfer body may need more information about the property before determining the purchase price, level of rent or other terms and conditions to be proposed. The Scottish Ministers may make regulations under section 54 about asset transfer requests. These may include, under subsection (3), details of how a community transfer body can request such information and how a relevant authority is to respond. Regulations under subsection (2) may also specify how asset transfer requests are to be made, additional information to be included in
them, and the procedure to be followed by a relevant authority in relation to requests. They may also include requirements to publish the fact that a request is being made, and to notify specified people about them.

Decisions

262. A relevant authority must decide whether to agree to or refuse an asset transfer request in accordance with section 55. It must compare the benefits that might arise if the request is agreed to with those that might arise from any other proposal for the land, whether made through another asset transfer request, by the authority, or by any other person (subsection (3)(e) and (6)). In doing so it must consider whether the proposals will promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing and any other benefits, and the decision must be reached in a manner which encourages equal opportunities and the observance of the equal opportunity requirements. The relevant authority must also consider other matters it considers relevant, including the functions and purposes of the authority, and any obligations that may affect its ability to agree to the request. Subsection (5) requires that the authority must agree to the request unless there are reasonable grounds for refusing it.

263. Subsection (7) requires the relevant authority to give notice to the community transfer body of its decision, and the reasons for that decision, within a specified period, as described in subsection (8). Subsection (9) gives the Scottish Ministers power to make regulations about the information to be included in this decision notice and how it is to be given.

264. Section 56 sets out the procedure to be followed when an asset transfer request is agreed to. The decision notice given by the relevant authority must specify the terms and conditions on which the authority is prepared to carry out the transfer. These terms and conditions may or may not reflect those included in the asset transfer request. The community transfer body must in turn submit an offer, within a period specified in the decision notice, reflecting the terms and conditions set out in the decision notice, and any other terms and conditions needed to make sure the transfer can take place, and that it takes place within a reasonable time. After this the community transfer body and the relevant authority will make arrangements to conclude a contract, as would happen with any sale or lease of property.

265. Subsection (5) provides that if a contract is not concluded within the period set out in subsection (7) to (9), the arrangement ends and is treated as if the asset transfer request had not been agreed. However, this is not treated as a refusal of the request, so no appeal can be made. The period for concluding a contract is normally a minimum of 6 months from the date of the offer. A longer period can be agreed between the relevant authority and the community transfer body. If the relevant authority does not agree to extend the period, the community transfer body may apply to the Scottish Ministers under subsection (8) to direct that the period should be extended. This can be done more than once. Scottish Ministers may make regulations under subsection (10) about these directions and how to apply for them.

266. When a relevant authority has agreed to transfer land in response to an asset transfer request, section 57 prevents the authority from disposing of that land to anyone other than the body that made the request. This applies from the day the decision notice is given to the day when the transfer process ends. The process ends when a contract is concluded (subsection
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(4)(a)), or when no offer has been made within the specified period (subsection (3)(a)), or when no contract has been concluded within the specified period (subsection (4)(b)). If the relevant authority enters into a contract with another person, during this period, to sell or lease the land to them, subsection (5) makes that contract unenforceable.

Appeals and reviews

267. Section 58 sets out the circumstances when a community transfer body can appeal in relation to an asset transfer request. This may be because:

- the request has been refused;
- the request has been agreed but the relevant authority has required terms and conditions which are significantly different to those proposed in the request; or
- no decision has been made within the required period.

268. The community transfer body can appeal to the Scottish Ministers, unless the relevant authority is the Scottish Ministers or a local authority. (If the relevant authority is a local authority, section 59 applies instead.) Regulations made under subsection (3) may set out how appeals are to be carried out.

269. The Scottish Ministers may allow the appeal or may dismiss it and may reverse or vary (change) any part of the decision of the relevant authority, including changing any terms and conditions that were imposed. The Scottish Ministers may reverse or vary part of the decision of the relevant authority even if the appeal does not relate to that part. If the Scottish Ministers decide the relevant authority must transfer ownership, lease or confer rights in relation to land, or agree to certain terms and conditions, they must issue a direction requiring the relevant authority to issue a new decision notice in line with the appeal decision. That notice will replace the original decision notice.

270. If a community transfer body has made an asset transfer request to a local authority, instead of an appeal to the Scottish Ministers, the body can ask the local authority to review the case, under section 59. This can be done in the same circumstances as when an appeal can be brought, that is if:

- the request has been refused;
- the request has been agreed but the local authority has required terms and conditions which are significantly different to those proposed in the request; or
- no decision has been made within the required period.

The Scottish Ministers may make regulations prescribing how such reviews are to be carried out, and time limits for reviews to be requested. Regulations may allow local authorities to decide how certain stages of a review are carried out.

271. Subsection (8) means that the local authority must consider the same issues when reviewing a decision as it would in making an initial decision on an asset transfer request, and must agree to the request unless there are reasonable grounds for refusal. Subsection (5) provides that, having carried out a review, the local authority may confirm or change its
decision, including altering any terms and conditions set out in the original decision notice. It
must then provide a new decision notice, providing the reasons for the decision made on review.
This notice replaces the original decision notice.

272. When an appeal or review results in an asset transfer request being agreed (with or
without amended terms or conditions), the process then continues under the provisions of section
56, with the community transfer body making an offer and the two parties proceeding to
conclude a contract.

Land leased to a relevant authority

273. Section 60 applies where all the criteria set out in paragraphs (a) to (d) of subsection (1)
are met. It deals with the situation where an asset transfer request is made to lease or otherwise
occupy land (including a building) which is leased to a relevant authority by another relevant
authority, or by a company wholly owned by another relevant authority. Subsections (2) and (3)
mean that any conditions in that lease which restrict the relevant authority’s ability to sub-let or
share occupancy of the land, or restrict how the land may be used, do not prevent the relevant
authority agreeing to lease the land to the community transfer body or to allow the body to
occupy the land.

274. This does not apply if any other person is entitled to occupy the land (subsection (1)(d)).
Subsections (4) and (5) also provide that it does not affect any restrictions on the power of the
relevant authority to assign or transfer rights and liabilities under the lease, and the relevant
authority continues to be subject to any obligations under the lease, even if it leases the land to
the community transfer body or allows the body to occupy it. For example, the relevant
authority would still be responsible to the landlord for any maintenance requirements included in
the lease between them.

Repeated requests

275. Section 61 is intended to help relevant authorities deal with repeated, vexatious requests.
It means that if a second request relating to the same land or building is made within two years of
a previous request, which was refused, the relevant authority may choose not to consider that
second request. Subsections (4) and (5) provide that this only applies if the new request seeks
the same type of transfer, but it does not matter whether the new request is made by the same
body or a different one. For example, if one community transfer body requests to lease a
particular building, and is refused, and another body requests to lease the same building within
two years, the relevant authority may decline to consider that second request. On the other hand,
if the second request was for transfer of ownership instead of a lease, the relevant authority
would have to consider it. Declining to consider a request under these circumstances does not
count as a refusal of the request and therefore is not eligible for appeal or review.

Part 6: Common good property

276. Common good property is property owned by local authorities for the common good of
the inhabitants in their areas which has been passed down, through local government
reorganisation, from the former burghs. Those burghs would have received it as a gift or
purchased it. It includes land and buildings, moveable items such as furniture and art, and cash
funds. It is sometimes difficult to know whether property is part of the common good, and there may be restrictions on how certain items of common good property are allowed to be used and whether the local authority can dispose of them. In some cases this has to be decided by the courts.

277. This Part of the Bill increases transparency about common good assets and community involvement in decisions taken about their identification, use and disposal. It does not define or redefine common good or remove or alter any restrictions on the use or disposal of common good property.

Common good registers

278. Section 63 requires each local authority to establish and maintain a register of its common good property. Before establishing this register it must publish a list of what it proposes to include, and notify any community councils and other community bodies in its area. In this Part, “community bodies” are defined as any group set up to promote or improve the interests of any communities which exist in the area. Community councils and community bodies must be invited to comment on the proposed register, and the local authority must take account of any comments made by those bodies or anyone else. This gives everyone the opportunity to say whether they think the local authority has missed any common good property from the list, or included anything which is not part of the common good.

279. Subsection (8) requires the local authority to make its completed common good register available for the public to inspect in person, and to make it available on a website or by other electronic means.

280. Section 64 requires local authorities to have regard to any guidance issued by the Scottish Ministers about common good registers. Before issuing any guidance, the Scottish Ministers must consult local authorities, community councils, and appropriate community bodies.

Disposal and use of common good property

281. Section 65 ensures that communities are consulted before a local authority disposes of any common good property or changes its use. As with establishing the common good register, the local authority must publish its proposals, notify community councils and community bodies, and take account of any comments made by them or anyone else. In this case the local authority only needs to consult community bodies which it knows have an interest in that particular property. Common good property is usually of most interest to people in the immediate neighbourhood, and it would not be appropriate to consult community bodies from other parts of the local authority area.

282. Section 66 requires local authorities to have regard to any guidance issued by the Scottish Ministers about disposal or change of use of common good property and about the management and use of common good property.
Part 7: Allotments

Meaning of “allotment”

283. Earlier legislation on allotments does not provide a clear definition of “allotment”. Section 68 of the Bill defines “allotment” for the purpose of this Part. Paragraph (a) provides that an allotment is land that is either owned or leased by a local authority. Privately leased or owned allotments are not covered by the Bill. Additional requirements for land being an allotment under Part 7 of the Bill are that the land is leased, or intended to be leased, by a person resident in the local authority area and that the land is used wholly or mainly for the non-commercial cultivation of vegetables, fruit, herbs or flowers.

284. Land may also only be an allotment if it is of such size as may be set out by the Scottish Ministers in regulations under paragraph (d).

Meaning of “allotment site”

285. No specific definition of “allotment site” has been included in earlier allotment legislation. Section 69 defines “allotment site” for the purpose of Part 7 as an area of land consisting wholly or partly of “allotments”, as defined in section 68. An “allotment site” also includes other local authority land that allotment tenants use in connection with their allotments, such as communal buildings, and environmental areas.

Request to lease allotment

286. Section 70 provides for requests to lease allotments from a local authority. Subsection (1) provides that any resident in a local authority area may request to lease an allotment from that local authority.

287. Subsection (2) provides that this request must be in writing and include the name and address of the applicant. Regulations may also set out further information that must be included in the request.

288. Subsection (3) makes provision for requests for allotments by disabled persons and allows details of any additional requirements regarding access to and adaptation of the allotment to be provided in the request. For example a need for adaptations such as raised beds and wider paths should be specified.

289. Subsection (4) provides that a request for an allotment may be made even if the local authority does not currently provide allotments in their area. A joint request for an allotment may also be made by two or more persons, so long as the applicants are all resident in the relevant local authority area (subsection (5)).

290. Once a request is received, the local authority is under a duty to acknowledge the request in writing within 28 days (subsection (6)).
Duty to maintain list

291. Section 71 imposes an obligation on local authorities to establish and maintain a waiting list of residents who have requested an allotment.

292. Subsection (2) clarifies that there is no set format for such lists and local authorities may manage them as they see fit. They may, for example, wish to split the list into applicants’ preferred geographical areas. Subsection (3) provides that a person’s details must be removed from the list when they are offered an allotment or withdraw their request.

Duty to provide allotments

293. Section 72 imposes a duty on local authorities to take reasonable steps to provide sufficient allotments to keep the list referred to in section 71 at no more than half the authority’s current number of allotments.

294. Where a local authority does not on the date that section 72 comes into force own or lease allotments, subsection (2) sets out that this duty is triggered when there are 15 people on the local authority waiting list maintained under section 71(1). However, where a local authority already owns or leases allotments, subsection (3) sets out that the duty arises after only one person is on the waiting list.

295. The Scottish Ministers may by order amend the number of people on the waiting list that triggers the requirement on the local authority to take reasonable steps to provide more allotments, or the proportion of current allotments below which the waiting list is to be kept (subsections (4) and (5)).

Allotment site regulations

296. An obligation is placed on each local authority under section 73(1) to make allotment site regulations for their area within two years of this section coming into force.

297. The matters set out in subsection (3) must be included in the regulations.

298. In addition to the mandatory requirements under subsection (3), subsection (4) sets out other matters local authorities may include in the regulations.

299. Local authorities are permitted to vary the regulations for different areas or different types of allotment sites in order to take account of local circumstances (subsection (5)).

Allotment site regulations: further provision

300. Section 74 sets out the process that local authorities must undertake to make allotment site regulations, or to vary or revoke them. Subsection (2) provides that local authorities must at least one month before making regulations advertise their intention to do so, the purpose of the regulations, where they may be inspected and details about making representations. They must also make copies of the proposed regulations available. A person who objects to the regulations
may make representations to the local authority and must be allowed an opportunity to be heard and his or her representations taken account of before the local authority makes its final decision (subsections (3) and (4)). Where regulations contravene the local authority's lease of the site, the provision in the lease is to prevail (subsection (11)).

**Disposal etc. of allotments and allotment sites owned by local authority**

301. Section 75 applies where an allotment site is owned by a local authority.

302. If a local authority wishes to change the use of or dispose of an allotment site it owns, it requires to obtain the consent of the Scottish Ministers before doing so (subsection (2)). The Scottish Ministers may consent subject to conditions (subsection (3)), and in particular may only grant consent if they are satisfied that each of the allotment tenants from the site has been offered an alternative allotment within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (4)).

**Disposal etc. of allotments and allotment sites leased by local authority**

303. Section 76 applies where a local authority leases an allotment site and sub-leases either the site (e.g. to an allotment association), or allotments within the site, to tenants.

304. Subsection (2) sets out that the local authority may not renounce (terminate voluntarily) the lease of an allotment site without the consent of the Scottish Ministers. In addition, even where a change of use is permitted by the head lease, the local authority may not change the use of the allotment site unless the Scottish Ministers consent (subsection (3)).

305. As with section 75 above, the consent of the Scottish Ministers may be subject to conditions (subsection (4)), and the Scottish Ministers may not grant consent unless they are satisfied that the allotment tenants have been offered a suitable alternative allotment within a reasonable distance of the allotment site which is closing, or that the provision of an alternative is not necessary or reasonably practical in the circumstances (subsection (5)).

**Duty to prepare food-growing strategy**

306. Section 77 places a duty on every local authority to prepare a food-growing strategy which must be published within two years of this section coming into force. Subsection (3) provides that the food-growing strategy must identify land in the local authority area which could be used by a community to grow vegetables, fruit, herbs or flowers, as well as land that could be used for allotments, and must describe how the authority intends to increase the provision of allotments or other land for community growing, should there be an identified need. The Scottish Ministers may also prescribe other information to be included in a food growing strategy.

307. Once complete, the local authority must publish the food growing strategy on a website or by other electronic means (subsection (4)).
Duty to review food-growing strategy

308. Each local authority is under a duty to review its food-growing strategy, under section 78. This must be done 5 years after the date of initial publication and every 5 years thereafter (subsection (1)). Where the local authority makes changes to its food growing strategy following a review, the revised strategy must be published on a website or by other electronic means (subsection (2)).

Annual allotments report

309. Under section 79, every local authority is under a duty to prepare and publish an annual allotments report. This requires to be done as soon as is reasonably practicable after the end of each reporting year (as defined in subsection (4)). Publication must be on a website or by other electronic means (subsection (3)).

310. Subsection (2) sets out the matters which require to be detailed in the annual allotments report and allows other information to be required in the report by regulations made by the Scottish Ministers.

Power to remove unauthorised buildings from allotment sites

311. The regulations regarding allotment sites to be made under section 73 must include provision for buildings and structures that are permitted on allotments, including modifications that may be made and the materials that may or may not be used in connection with such structures. The regulations may also include provision for buildings or structures that are permitted on land mentioned in paragraph (b) of the definition of “allotment site”, being communal areas within the site, including permitted modifications and materials. If a building or structure is not permitted under regulations made under section 73(1), and at the time it was erected or modified, that erection or modification was prohibited by such regulations, section 80 gives a local authority the power to remove the building or other structure.

312. Subsection (2) provides that a local authority may:

- remove the building or other structure from the site;
- dispose of the materials that formed the building or other structure; and
- recover the cost of the removal and/or disposal of the materials from a “liable tenant”, being the tenant from whose allotment it is removed or, if on a part of the site that is not an allotment, from the tenant or tenants responsible for its erection (subsection (3)).

313. In cases where more than one tenant has consented to the erection of an unauthorised building or structure, each such tenant shall be jointly and severally liable for the recoverable costs (subsection (4)).

314. Prior to exercising this power to remove unauthorised buildings, a local authority must follow the procedure set down in subsection (5). Firstly, notice must be given to every tenant who may be affected by the removal of the building or structure. Secondly, the tenant(s) must be
given the opportunity to make representations about the proposed action and there is a duty placed on the local authority to give appropriate consideration to these representations. Once a decision is reached, the local authority must notify this decision to the affected tenant(s) in writing, specifying the date on which the action is to take place, if applicable. Upon receipt of a notice under subsection (5)(d) a tenant has 21 days to appeal to a sheriff against the decision of the local authority.

315. A limitation placed on this power is that where a local authority leases an allotment site, it cannot remove buildings or other structures if this removal is in breach of a provision of the lease (subsection (8)).

316. Subsection (7) allows the Scottish Ministers to make regulations regarding the procedure to be followed in relation to the exercise of the power to remove buildings or structures, dispose of the materials and recover the costs of removal and disposal.

Delegation of management of allotment sites

317. Part 7 of the Bill imposes certain management functions on local authorities in relation to allotment sites. Section 81 allows a local authority to delegate certain functions to a person who represents the interests of the tenants of each of the allotments on a particular site. Usually, this “person” will be an allotment association.

318. Only the functions set out in subsection (2) may be delegated by the local authority.

319. In order for functions to be delegated, a written application must be made by the person wishing to take over the functions of the local authority. The application must include the name and address of the applicant, in addition to such information as the Scottish Ministers set out in regulations (subsection (3)).

320. Upon receipt of an application the local authority has 14 days in which to request from the applicant such further information as it requires in order to make a decision as to whether to agree or refuse the request. The applicant must provide this information within 14 days of it being requested (subsection (4)).

321. There are time limits by which the local authority must make and notify a decision on an application and these are set out in subsection (5). Where no further information has been requested from the applicant, the decision must be notified to the applicant within 28 days of receipt of the application. Where further information has been requested, this time limit is increased to 56 days.

322. If the request is refused, the local authority must send the applicant a decision notice which sets out the reasons for the refusal of the application (subsection (6)).

323. If the request is agreed, the local authority must decide which of its functions it is delegating to the applicant and when the delegation will be reviewed. Prior to the decision on
which functions to delegate, the local authority is under an obligation to consult with the person who has made the request (subsection (8)).

324. In cases where the local authority considers that the person to whom they have delegated functions is not carrying out these functions satisfactorily, or where there is a disagreement between this person and the local authority, the local authority has the power to recall any of the functions it has delegated under this section (subsection (9)).

325. It is also set out in subsection (10) that where the local authority is leasing an allotment site from another person, any delegation of its functions must not contravene the head-lease.

Promotion and use of allotments: expenditure

326. Section 82 permits a local authority to incur expenditure for the purpose of promoting allotments in its area and providing training by or on behalf of the local authority to tenants and potential tenants about the use of allotments.

Termination of lease of allotment or allotment site

327. Section 83 confers a power on a local authority to terminate the lease of whole or part of an allotment or allotment site.

328. Where a tenant has been complying with allotment site regulations made under section 73, the minimum notice of termination the local authority is required to give is one year (subsection (2)). This applies where the Scottish Ministers have consented to disposal of the site, change of its use, or renunciation of the lease of the site under section 75 or 76. Where there has been a breach of allotment site regulations by a tenant, the notice period is reduced to 1 month (subsection (2)).

329. A local authority must write to any tenant to inform them of its intention to give notice to terminate a lease no later than one month in advance of serving such a notice (subsection (5)). The local authority is also required to allow the tenant any opportunity to make representations to the authority in relation to the proposed termination and must take account of such representations. After considering these representations the local authority must write to the tenant to inform them of their intention to no longer proceed or to give notice (subsection (5)(d)). A tenant who is aggrieved by a notice may appeal to the sheriff within 21 days of the date of the notice (subsection (6)). A notice served under this section does not take effect until the appeal period has expired or, where there is an appeal, the appeal has been withdrawn or finally determined (subsection (8)).

330. The written notice must specify the termination date of the lease (subsection (1)) If, however, the local authority has given notice under section 85 where its lease of the site has been terminated by its landlord, it does not require to also give notice under this section (subsection (11)).
**Resumption of land by local authority**

331. If allotment land is required by the local authority for building, mining or other industrial purpose (or for the construction, maintenance or repair of roads or sewers necessary in connection with these purposes), the local authority can, in certain circumstances, resume the whole or part of an allotment or allotment site, under section 84. This power can only be exercised with the consent of the Scottish Ministers and where the tenant has been given notice in accordance with subsection (3). The Scottish Ministers may grant consent subject to such conditions as they think fit (subsection (4)) and may only grant consent if they are satisfied that each of the allotment tenants from the site has been offered an alternative allotment within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (5)).

332. Subsection (3) provides that written notice of the resumption must be given to allotment tenants and this notice must specify the date on which the resumption is to take place. The minimum notice period is 3 months and the notice must therefore be served in accordance with this prescribed time limit.

**Notice of termination: sublease**

333. Where a local authority leases an allotment site from another person and then sub-leases either the site or particular allotments to tenants, it is possible that the local authority’s landlord may terminate the head-lease to the local authority. Section 85 provides that the effect of this is that the sub-lease(s) granted by the local authority will come to an end on the date that the head-lease between the landlord and the local authority comes to an end.

334. Section 85(2) places an obligation on the local authority to send a copy of the notice of termination of the head-lease to each subtenant and inform them that the effect of the termination of the head-lease will be the termination of the sub-leases.

**Notice of termination: sublease by allotment association**

335. Where a person, such as an allotment association, leases an allotment site from a local authority and is given notice by the local authority, section 86 provides that that person must give notice to each subtenant informing them that the effect of termination of the head-lease will be termination of the sub-leases.

**Sale of surplus produce**

336. Section 87 sets out that allotment tenants may sell produce grown on their allotments provided this is not with a view to making a profit (e.g. it may be sold for charity) if the produce falls within a description set out in regulations. Under subsection (1), the Scottish Ministers are given the power to make regulations which describe the produce which may be sold.

337. Before the Scottish Ministers make regulations under subsection (1) they must consult with each local authority and any other interested persons (subsection (2)).
Removal of items from allotment by tenant

338. Section 88 provides that before the expiry or termination of a tenant’s allotment lease a tenant may remove certain items from their allotment. These items are any buildings or other structures erected by or on behalf of the tenant, or any produce, trees or bushes acquired by the tenant or planted by or on behalf of the tenant.

Compensation for disturbance

339. Where an allotment lease is terminated by way of one year’s notice, termination of the head lease of the site by the local authority’s landlord, or resumption, section 89 provides tenants with a right to be compensated for damage caused by the disturbance of the enjoyment of the allotment (subsections (1) and (2)). A formula sets out how the minimum amount of compensation is to be calculated (subsection (3)). Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. There is a right of appeal to the Sheriff against a local authority’s decision in respect of compensation (subsection (7)).

Compensation for deterioration of allotment

340. Under section 90, where a lease of an allotment from a local authority has ended and the allotment has deteriorated during the tenant’s tenancy due to the tenant’s fault or negligence, the sum required to remedy the deterioration is due in compensation from the tenant to the local authority. Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about determining liability for, and the amount of, compensation. A tenant has a right of appeal to the sheriff against a decision of a local authority under this (subsection (7)).

Compensation for loss of crops

341. Section 91 provides that where an allotment lease is terminated by way of resumption and the tenant loses crops due to the resumption, the local authority is liable to compensate the tenant for the loss of crops (subsections (1) and (2)). This compensation is only due to the tenant of an allotment; not to a tenant of an allotment site, such as an allotment association. The Scottish Ministers are required to make regulations about determining liability for, and the amount of, compensation (subsection (3) and (4)). A tenant has a right of appeal to the sheriff against a local authority decision under this section (subsection (6)).

Set-off compensation etc.

342. Where a lease is terminated, section 92(1) allows local authorities who are liable to compensate a tenant or subtenant for disturbance or loss of crops to deduct from the sum due any sum due by the tenant in connection with the lease.

343. Subsection (2) provides that where a tenant is liable to pay a sum to the local authority in connection with the lease, the tenant can deduct any sum due to them by the local authority by way of compensation for disturbance or loss of crops.
Part 8: Non-domestic rates

Schemes for reduction and remission of rates

344. The Bill provides for reduction or remission of rates for non-domestic properties (usually referred to as “land and heritages”) in Scotland. It creates a power to allow rating authorities (which are the local authorities) to reduce or remit non-domestic rates (often referred to as business rates) within their areas, in any financial year from 2015-16 onwards. This power will allow any rating authority to create, if it wishes, local relief schemes for any lands and heritages from which it collects rates.

345. The power is created by an amendment to the Local Government (Financial Provisions etc.) (Scotland) Act 1962. Section 94(1) of the Bill inserts section 3A into that Act to provide the power. Section 3A(4) allows reliefs to apply in schemes defined by categories of property, areas, activities, or any other matter. Any relief awarded ceases to apply when there is a change in the occupation of the premises, under subsection (5) of section 3A. Subsection (6) requires the rating authority to have regard to the interests of people who pay council tax set by the authority before creating or amending a relief scheme. This is because any loss of income from non-domestic rates incurred by the scheme must be offset from other income raised by the local authority.

346. Section 94(2) amends Schedule 12 to the Local Government Finance Act 1992 (payments to local authorities) to ensure that the arrangements for pooling of income from non-domestic rates and funding of rating authorities will accommodate and remain unaffected by the power to create relief schemes. Subsections (3) and (4) make consequential amendments to allow these changes to take effect.

Part 9: General

347. Part 9 provides general information which relates to all Parts of the Bill.

348. Section 95 requires the Scottish Ministers to publish any guidance they issue under Part 2 or Part 6 of the Bill. (These are the only Parts that require people to have regard to guidance issued by the Scottish Ministers.)

349. Section 96 regulates how the Scottish Ministers can make orders or regulations under the Bill, including the procedure (“affirmative” or “negative”) by which they are to be scrutinised by the Scottish Parliament.

350. Section 97 gives Ministers powers to make additional provision that is necessary or expedient to make sure the provisions of the Bill work properly. Section 96(2) provides that any order under section 97 which amends the text of an Act must be scrutinised in the Scottish Parliament by the stronger “affirmative” procedure.

351. Section 99 sets out when the provisions of the Bill come into force. Part 9 comes into force the day after the Bill receives Royal Assent. The rest of the Bill will come into force on
dates decided by the Scottish Ministers, which will be set out in commencement orders. Different parts of the Bill may be brought into force at different times.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Community Empowerment (Scotland) Bill introduced in the Scottish Parliament on 11 June 2014. It has been prepared by the Scottish Government, to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

OVERVIEW

2. The Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:
   - empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
   - support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.

3. In doing so, this Bill aims to support approaches that can contribute to improving outcomes in all aspects of people’s lives. The memorandum summarises the cost implications of the Bill, drawing on consultation responses and information from, and conversations with, a range of organisations including: COSLA, Development Trusts Association Scotland, and Forestry Commission Scotland.

CONTENTS

4. This Financial Memorandum sets out the costs associated with the following parts to the Bill:
   - **Part 1** places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government’s internationally acclaimed “Scotland Performs” framework.
   - **Part 2** places community planning partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes.
   - **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered.
   - **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
   - **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or the Scottish Ministers.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good and requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plotholders.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities.

5. There are likely to be some additional, mainly administrative, costs to the Scottish Government, public bodies, local authorities, community bodies and others as a result of the Bill. As set out below, in relation to the parts of the Bill concerned with participation requests, the community right to buy and asset transfer requests the costs will be driven by the demand to use the provisions at a local level and will often depend on the circumstances of the request or application. Increased demand may lead to increasing costs in these areas, in particular for asset transfer requests where public authorities decide to transfer an asset at below market value this will have a financial consequence for the organisation. In these cases an assessment of the costs and benefits associated with an asset transfer would be made to demonstrate that the transfer represents public value. The Financial Memorandum assumes that the Bill provisions will take effect from the financial year 2015-16 onwards, subject to necessary consultation, guidance, secondary legislation and other practical implementation elements having been carried out. Table 1 provides a summary of the additional costs expected as a result of the Bill provisions being introduced.

**Table 1: Summary table of additional costs expected as a result of provisions being introduced**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Financial Memo Paras</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
<th>Costs on other bodies, individuals or businesses</th>
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</thead>
<tbody>
<tr>
<td>National outcomes</td>
<td>6 to 9</td>
<td>The Scottish Government expects any costs to be minimal and absorbed within existing budgets.</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Community planning</td>
<td>10 to 17</td>
<td>Nil</td>
<td>It is anticipated that the provisions will impose minor additional costs on local authorities due to the local action that is already underway</td>
<td>It is anticipated that the provisions will impose minor additional costs on public bodies involved due to the local action</td>
</tr>
</tbody>
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<tr>
<td>Participation requests</td>
<td>18 to 24</td>
<td>Demand driven Costs will be contingent on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland.</td>
<td>Demand driven Costs will be contingent on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland.</td>
<td>Nil</td>
</tr>
<tr>
<td>Community right to buy: modifications of Part 2 of Land Reform (Scotland) Act 2003</td>
<td>25 to 48</td>
<td>Demand driven It is anticipated that the provisions are likely to impose additional administrative costs on the Scottish Government. In 2012-13 the Scottish Government staffing costs for Community Right to Buy were £178,000. Additional staffing costs are likely to arise with extension of community right to buy to urban Scotland, costs will be dependent on the level of demand. Costs in 2012-13 for maintenance</td>
<td>Nil</td>
<td>Demand driven Costs will be contingent on decisions made by individual community bodies and landowners. Communities – legal entities: We do not anticipate there to be any significant additional costs in setting up a Scottish Charitable Incorporated Organisation. Landowners withdrawing land from sale: landowners may be asked to pay back Ministers for the costs of the independent valuation if they...</td>
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<td>and upkeep of Register of Community Interests in Land were £7,410. Additional costs likely to arise with extension of community right to buy to urban Scotland. Community – legal entities: £10,000 to develop a model for Scottish Charitable Incorporated Organisations. Valuation of land: Average cost is £2,382 so between 5 and 10 valuations per year would lead to an average cost of between £11,910 and £23,820. Monitoring: limited additional costs in collecting, assessing and presenting the results of monitoring exercises. Late applications: Potential for increased requests for compensation from landowners. Balloting:</td>
<td>withdraw the land from sale, average cost for valuation is £2,382. “Exempt” transfer of land: Landowners may incur legal representation costs if they chose to engage a solicitor. Appeals: The provisions allow for a number of appeals. In some circumstances costs may have to be borne by a landowner or community body. Costs will vary from case to case.</td>
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<td>Assuming 5 to 10 ballots per year the average yearly cost could vary between £5,200 and £53,530 based on the model used and the size of the community being balloted. Appeals: The provisions allow for a number of appeals. In some circumstances costs may have to be borne by the Scottish Ministers. The Scottish Government’s legal costs for 2012-13 were £21,225 and will vary from year to year and case to case. <strong>Summary</strong> Annual costs: Valuations and ballots: £17,110 to £77,350. Other administrative and legal costs will be dependent on any increase in demand. One off costs: £10,000 to develop</td>
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<tr>
<td><strong>Community right to buy: neglected and abandoned land</strong></td>
<td>49 to 69</td>
<td><strong>Demand driven</strong>&lt;br&gt;It is anticipated that the provisions will impose additional administrative costs on the Scottish Government dependent on the level of demand.</td>
<td>Nil</td>
<td><strong>Demand driven</strong>&lt;br&gt;Costs will be contingent on decisions made by individual community bodies and landowners. Communities – legal entities: We anticipate there to be minimal additional costs in setting up a company limited by guarantee. Balloting: The average cost of each ballot for a community body would be between £1,040 and £5,353 Compensation costs: There is provision for those who has incurred a loss or expense under the provisions to be entitled to compensation. It is expected that costs will vary from case to case. Appeals: The</td>
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<td>Appeals: The provisions allow for a number of appeals. In some circumstances costs may have to be borne by the Scottish Ministers. Costs will vary from case to case.</td>
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<td></td>
<td>Summary</td>
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<td>Register of applications: on-going maintenance and update costs of £10,000.</td>
<td></td>
<td>Set-up costs: Community – legal</td>
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These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

<table>
<thead>
<tr>
<th>Topic</th>
<th>Financial Memo Paras</th>
<th>Costs on Scottish Administration</th>
<th>Costs on local authorities</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>entities: £10,000 to develop a model for the right to buy neglected and abandoned land. Register of applications: set up costs of £10,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset transfer requests</td>
<td>70 to 82</td>
<td>Demand driven Additional costs will be contingent on how often community bodies use the provisions and at this stage it is difficult to forecast use across Scotland.</td>
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<td></td>
<td></td>
<td>Scottish Government may decide to transfer assets at less than market value, which will have a financial consequence depending on the value of the asset.</td>
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<tr>
<td></td>
<td></td>
<td>Asset transfers, including those undertaken at less than market value, will be done on the basis of a full assessment of the costs and benefits, including predicted savings in the delivery of services and improved local outcomes to demonstrate that a</td>
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<td></td>
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<td></td>
<td>The value of asset transfer requests varies enormously according to the request to buy, lease, manage or otherwise use land or buildings belonging to a public body.</td>
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<tr>
<td></td>
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<td>Some recent asset transfers have varied in value from £5,000 to £1.55m.</td>
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<td>-----------------------------------------------</td>
</tr>
<tr>
<td>Common good property</td>
<td>83 to 91</td>
<td>Nil</td>
<td>It is anticipated that the provisions will impose some additional costs on local authorities.</td>
<td>Nil</td>
</tr>
<tr>
<td>Allotments</td>
<td>92 to 100</td>
<td>Nil</td>
<td>Duty to provide allotments: costs will be dependent on how much provision is required to meet individual local authority targets and how much provision is actually possible.</td>
<td>Nil</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Local authority estimates on recent cost ranged from £1,900 to £6,250 per plot, and from £21,000 to £150,000 for a whole site. Duty for local authorities to hold and maintain waiting lists: Local authority estimates of maintaining a waiting list varied from £100 to £9,000 per year. Duty for local authorities to publish an annual report and produce a food growing strategy: Local</td>
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<tbody>
<tr>
<td>Non-domestic rates: schemes for reduction and remission of rates</td>
<td>101 to 106</td>
<td>Nil</td>
<td>authority estimate to produce an annual report is between £500 and £1,000. Estimates on the costs of producing a strategy are between £5,000 and £9,350.</td>
<td>Nil</td>
</tr>
</tbody>
</table>

**PART 1: NATIONAL OUTCOMES**

**Introduction**

6. The Bill places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland. They must also regularly and publicly report progress towards those outcomes. It requires national outcomes to be determined, but there is flexibility as to how these may be presented and measured.

**Costs on the Scottish Administration**

7. It is anticipated that the provisions will impose minor additional administrative costs on the Scottish Government. All costs associated with this provision would be met from existing Scottish Government resources. The Bill’s proposed requirements to develop, consult and report on national outcomes would be considered a core part of Scottish Government business.

**Costs on local authorities**

8. It is not anticipated that the provisions should impose any additional costs on local authorities. Local authorities routinely respond to Scottish Government consultations as part of their core business.

**Costs on other bodies, individuals and businesses**

9. It is not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.
PART 2: COMMUNITY PLANNING

Introduction

10. The measures in the Bill seek to strengthen the roles and responsibilities of community planning partnerships (CPPs) and place new duties on public sector partners to play a full and active role in community planning and the resourcing and delivery of local priority outcomes. In doing so they complement and reinforce the significant national and local action that is already underway to strengthen community planning. These include action by CPPs to implement new Single Outcome Agreements (SOA) which the Scottish Ministers and Council Leaders signed off in July and August 2013; and action by key public sector partners in community planning (including local authorities, NHS bodies and enterprise bodies) to work within CPPs to ensure that collective resources are more closely aligned towards shared priority outcomes in their SOA.

Costs on the Scottish Administration and public bodies

11. Schedule 1 to the Bill sets out a list of public sector bodies which will be required to participate in community planning. Some of these bodies (including NHS bodies, Scottish Enterprise and Highland and Islands Enterprise) are already statutory community planning partners. Others (including Skills Development Scotland, Scottish Natural Heritage and the Scottish Environmental Protection Agency) are not statutory partners at present but as a matter of practice frequently participate in community planning.

12. For those public sector bodies which are complying with national and local action already underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or minor additional costs. Any direct costs are most likely to relate to additional travel and related costs to participate in meetings with the CPP and partners. Any indirect costs are most likely to relate to additional commitment by senior officers and elected members.

13. More broadly, the provisions in the Bill will reinforce national and local policy expectations about how these public sector bodies allocate their resources, so they are more closely targeted towards improving outcomes, especially on themes which a CPP has prioritised in its local outcomes improvement plan.

Costs on local authorities

14. Local authorities currently incur modest costs for facilitating community planning in their area, by servicing and co-ordinating the work of the CPP. These are principally staff costs for community planning officers. We understand from one medium-sized local authority that expenditure for servicing its CPP (including its thematic sub-groups) is approximately £210,000 per annum. A small local authority estimates it spends approximately £70,000 for this purpose. These figures exclude indirect costs for senior officers and elected members (e.g. time spent attending meetings, preparing papers and initiating follow-up work).

15. The provisions in the Bill do not place any specific additional requirements about how the CPP must operate which would result in additional direct servicing costs for the local authority. For those local authorities which are complying with national and local action already
underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or minor additional indirect costs, in terms of commitment by senior officers and elected members.

16. More broadly, the provisions in the Bill will reinforce national and local policy expectations about how local authorities allocate their resources, so they are more closely targeted towards improving outcomes, especially on themes which a CPP has prioritised in its local outcomes improvement plan.

**Costs on other bodies, individuals and businesses**

17. Part 2 of the Bill does not place duties on other bodies, individuals and businesses. It is therefore not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.

**PART 3: PARTICIPATION REQUESTS**

**Introduction**

18. The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services. The provisions in this Part of the Bill are not intended to replace that activity, but they give community bodies an additional power to initiate that dialogue on their own terms, and a right to have their views properly considered.

19. Where an appropriate community body, or a group of bodies, believes it could help to improve the outcome of a service, it will be able to make a request to the public body or bodies that deliver that service, asking to take part in a process to improve that outcome. The public body must agree to the request for dialogue unless there are reasonable grounds for refusal. At the end of the process the public body must publish a report on whether the outcomes were improved and how the community body contributed to that improvement.

**Costs on the Scottish Administration and public bodies**

20. These provisions will apply in relation to public services provided by listed public bodies. There are likely to be costs associated in responding to participation requests. However, the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland. The Bill explicitly allows public service authorities to invite community bodies to join existing processes, therefore limiting the need for additional costs.

21. The costs to a public body of providing an outcome improvement process will vary according to circumstances. An example for a local authority is provided below in paragraph 23 and shows costs associated with a number of different community engagement events they undertook.
**Costs on local authorities**

22. There are likely to be costs associated in responding to participation requests. However, the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland. The Bill explicitly allows public service authorities to invite community bodies to join existing processes, therefore limiting the need for additional costs.

23. The costs to a local authority of providing an outcome improvement process will vary according to circumstances. For example, a local authority provided some costs associated with a number of community engagement events they undertook. The costs ranged from £1,100 for a series of events aimed at involving local older people in identifying key priorities and concerns up to £41,000 for a series of engagement events to tackle health inequalities. The majority of the costs in each case were staffing costs.

**Costs on other bodies, individuals and businesses**

24. It is not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.

**PART 4: COMMUNITY RIGHT TO BUY LAND**

**Introduction**

25. Based on the experience of those using the legislation over the first decade of community right to buy, the Bill makes a number of changes to the detailed procedures and requirements. These provisions are intended to make the process easier and more flexible for communities, while continuing to strike a fair balance between the rights of communities and landowners.

26. The Bill also extends the right to buy to all of Scotland, removing the power of the Scottish Ministers to designate “excluded land”, which currently excludes all settlements over 10,000 population. This, and the streamlining of procedures, may be expected to lead to more communities registering interest in land and taking up the right to buy. However, it is not possible at this stage to accurately estimate the demand and how many new applications may be received.

**Sections 27 to 47: modifications of Part 2 of the Land Reform (Scotland) Act 2003**

**Costs on the Scottish Administration**

27. It is not anticipated that the provisions should impose any significant additional costs on the Scottish Government. The elements of the Bill which may lead to an increase in costs on the Scottish Government are identified below. All additional costs would be met from existing resources.

**Community – appropriate legal entities**

28. We propose that there will be model constitutions available to communities wishing to use the community right to buy provisions under the Bill. The Scottish Government currently has
a model Articles of Association for companies limited by guarantee, which was developed in partnership with Highlands and Islands Enterprise and commercial solicitors.

29. A model for any other forms of community organisations would need to be developed and made compliant with the legislation. This will also need to be updated as necessary. We anticipate that it will cost in the region of £10,000 for the Scottish Government to develop a model for Scottish Charitable Incorporated Organisations in the first instance.

**Valuation of the land**

30. The Scottish Ministers currently pay for an independently conducted valuation once the community right to buy is triggered. These costs will continue under the Bill. The average cost of the 38 valuations since 2005 has been £2,382 which at an average of 4 per year is £9,528.

31. As noted above, as the Bill is extending the community right to buy all of Scotland and is making the process easier and more flexible we would expect that the average number of times that community right to buy is used to increase. It is difficult to forecast the number but an increase to between 5 and 10 per year would lead to an average cost of the valuation of land of between £11,910 and £23,820 per year.

32. The Bill introduces a right for the landowner to make counter-representations in relation to the valuation. A valuation currently takes six weeks to complete. With counter-representations, it is expected that the valuation will take up to eight weeks to complete. There will therefore be increased costs associated with valuation as additional work is required to be undertaken, in particular in the exchange of views on the valuation, and consideration of these views. We do not anticipate that this increase in cost will be significant.

**Monitoring the community right to buy**

33. There will be cost implications for the Scottish Government in collecting, assessing or presenting the findings of monitoring exercises. The costs of this requirement will depend on the arrangements put in place. We anticipate that any additional cost will be minor.

**Late applications**

34. Landowners are entitled to request compensation from the Scottish Ministers for the costs of maintaining their land and assets while a community body is seeking to use the community right to buy provisions. The period of the right to buy will be extended from 6 months to 8 months; this could therefore lead to increased requests for compensation. Requests for compensation under this provision have generally been limited.

**Balloting**

35. Community bodies currently make their own arrangements to ballot their community. In some cases the costs of the ballot were incurred by the community body, while in others they were borne by a local authority or another party. Section 37 provides that the Scottish Ministers will make arrangements for all ballots, and will bear the costs of these.
36. Over the period when the community right to buy has been used, there have been 40 ballots, in which 67,063 persons have been balloted (table 2). The average number of persons being balloted in a single ballot is 1,677 persons; the smallest ballot involved 43 persons (at Silverburn); the largest is 6,634 persons (Seton Fields).

37. The costs of this provision to 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.

38. As shown in table 2 below we have identified three models for costing the ballot: one is based on an estimated figure of a £2,000 standing charge and £2 per head administrative charge; a second one is based on the costs as applied to crofting elections; a third one is based on a ballot undertaken by a local authority. Using these possible models had the Scottish Government paid for the administration of the ballot, they would have spent between £41,579 and £214,126 on balloting costs since 2005. The average cost of each ballot would have been between £1,040 and £5,353.

**Table 2: Ballots undertaken in the community right to buy 2005-2014**

<table>
<thead>
<tr>
<th>Year</th>
<th>No. registered interests (approved)</th>
<th>No. rights to buy “triggered” and no. ballots</th>
<th>No. people balloted</th>
<th>Costs based on estimated figure*</th>
<th>Costs based on crofting elections ballots</th>
<th>Costs based on a Local Authority example**</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>13</td>
<td>10</td>
<td>2,343</td>
<td>£14,686</td>
<td>£5,108</td>
<td>£1,453</td>
</tr>
<tr>
<td>2006</td>
<td>10</td>
<td>4</td>
<td>8,187</td>
<td>£22,374</td>
<td>£17,848</td>
<td>£5,076</td>
</tr>
<tr>
<td>2007</td>
<td>28</td>
<td>7</td>
<td>16,046</td>
<td>£52,092</td>
<td>£34,980</td>
<td>£9,949</td>
</tr>
<tr>
<td>2008</td>
<td>14</td>
<td>4</td>
<td>1,109</td>
<td>£6,218</td>
<td>£2,418</td>
<td>£688</td>
</tr>
<tr>
<td>2009</td>
<td>9</td>
<td>1</td>
<td>152</td>
<td>£2,304</td>
<td>£331</td>
<td>£94</td>
</tr>
<tr>
<td>2010</td>
<td>6</td>
<td>5</td>
<td>21,948</td>
<td>£57,896</td>
<td>£47,847</td>
<td>£13,608</td>
</tr>
<tr>
<td>2011</td>
<td>6</td>
<td>1</td>
<td>406</td>
<td>£6,812</td>
<td>£885</td>
<td>£252</td>
</tr>
<tr>
<td>2012</td>
<td>10</td>
<td>3</td>
<td>12,921</td>
<td>£35,842</td>
<td>£28,168</td>
<td>£8,011</td>
</tr>
<tr>
<td>2013</td>
<td>13</td>
<td>3</td>
<td>3951</td>
<td>£15,902</td>
<td>£8,613</td>
<td>£2,450</td>
</tr>
<tr>
<td>2014</td>
<td>2</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>166</td>
<td>40</td>
<td>1,677</td>
<td>£214,126</td>
<td>£146,198</td>
<td>£41,581</td>
</tr>
<tr>
<td>Average</td>
<td>16.6</td>
<td>4</td>
<td>1,677</td>
<td>£5,353</td>
<td>£3,655</td>
<td>£1,040</td>
</tr>
</tbody>
</table>

*Estimated figure of £2,000 for standing charge, £1.50 printing and postage per ballot paper, and 50p counting charge.
**Costs from Seton Fields ballot conducted by East Lothian Council.

39. As noted above, as the Bill is extending the community right to buy to all of Scotland and is making the process easier and more flexible. We would expect the average number of times that community right to buy is used to increase.

40. Assuming that there is an average of between 5 and 10 right to buy applications each year, and an average of 1,667 persons being balloted, then average yearly costs could vary
between £5,200 and £53,530. This figure may be higher or lower, depending on the number of ballots and the number of people to be balloted. We might also expect that the number of people to be balloted in urban areas is at the higher end of the scale, given that population concentration will be higher in any given defined community area.

41. In exceptional circumstances where a ballot is flawed, a re-ballot will be required, which will incur further costs at an average cost of between £1,040 and £5,353.

**Appeals**

42. As we expect that there will be greater use made of the community right to buy provisions, we anticipate that there may be an increased number of appeals to the sheriff courts and to the Lands Tribunal for Scotland (LTS). The Scottish Government’s legal costs for 2012-13 were £21,225 and will vary from year to year and case to case. The Scottish Tribunals Service (STS) provides administrative support to the LTS. Arrangements for providing funding to the STS for cases to the LTS will be provided on a case-by-case basis. It is envisaged that funds will be reimbursed as cases progress through the LTS. At this stage it is not possible to accurately estimate how many cases will progress to the LTS and the time needed for each case will vary on the complexity of the case in question. The last recorded cases that the lead policy team has for appeals that went to the Sheriff Court were in 2009. In total, since 2004 there have been six cases brought against decisions by the Scottish Ministers pertaining to various things in the application process. Where the Scottish Ministers won an appeal costs were covered by the appellant. In certain cases, where the appellant was unable to pay, this was taken under consideration by the Scottish Ministers. Where the Scottish Ministers lost an appeal, the costs were borne by them. Costs are entirely dependent on level of legal representation required and a case’s complexity and have varied between £3,000 and £20,000.

**Costs on local authorities**

43. It is not anticipated that the provisions should impose any additional costs on local authorities.

**Costs on other bodies, individuals and businesses**

44. The elements of the provisions on community right to buy which may lead to an increase in costs on other bodies, individual and businesses are identified below. However, there is a large degree of uncertainty on the level of costs that may be incurred as it will be up to individual community bodies and landowners in how to use and respond to the provisions, including the need for appropriate legal advice.

**Communities – appropriate legal entities**

45. Model constitution documents allow communities to set up a legal entity as easily and cheaply as possible. Whether communities need to engage a solicitor or other expertise in this process is entirely up to them. The current costs of setting up a company limited by guarantee are negligible, with the Scottish Government’s solicitors checking over drafts before incorporation to ensure compliance with the requirements of the 2003 Act.
46. We do not anticipate there to be any significant additional costs on community bodies in setting up a Scottish Charitable Incorporated Organisation.

Landowner withdrawing land from sale

47. If landowners withdraw the land from sale after the right to buy has been triggered they may be asked to pay for the costs of the independent valuation. As stated above the average cost of land valuations since 2005 has been £2,382.

“Exempt” transfer of land

48. Under specific circumstances a landowner may transfer land while there is a registered interest in their land. Landowners are to inform the Scottish Ministers of such a transfer. It is up to a landowner to decide how to respond. There could be legal representation costs incurred by a landowner, whose solicitor will write to the Scottish Government to inform them that there has been an exempt transfer of land. The landowner alternatively may wish to make the representation themselves.

Section 48: neglected and abandoned land (new Part 3A of the Land Reform (Scotland) Act 2003)

Costs on the Scottish Administration

49. It is not anticipated that the provisions should impose any significant additional costs on the Scottish Government. The elements of the Bill which may lead to an increase in costs on the Scottish Government are identified below. All additional costs would be met from existing resources.

Community – appropriate legal entities

50. As indicated in paragraph 45 above, we propose that there will be a model constitution available to communities wishing to use the provisions under the Bill. The Scottish Government currently has a model Articles of Association for companies limited by guarantee, which was developed in partnership with Highlands and Islands Enterprise and commercial solicitors.

51. A model for the right to buy neglected and abandoned land will be developed and made compliant with the legislation. This will also need to be updated as necessary. We anticipate that it will cost less than £10,000 for the Scottish Government to develop a model, as the existing model for community companies for Part 2 of the Act provides a starting point.

Valuation of the land

52. The Scottish Ministers currently pay for an independently conducted valuation under Part 2 and Part 3 of the community right to buy and crofting community right to buy provisions. These costs will also be met by the Scottish Ministers under these provisions. As indicated above in paragraph 30 the average cost of the 38 valuations since 2005 has been £2,382.

53. The use of the provisions inserted by section 48 is difficult to forecast at this stage but there will be a cost associated with an increased number of valuations. A range of between 5 and
10 per year would lead to an average cost of the valuation of land of between £11,910 and £23,820.

54. The Bill introduces a right for the landowner to make counter-representations in relation to the valuation. This mirrors changes to the valuation procedures under Part 2 of the 2003 Act as indicated above in paragraph 32. With counter-representations, it is expected that the valuation will take up to eight weeks to complete. There will therefore be increased costs associated with valuation as additional work is required to be undertaken, in particular in the exchange of views on the valuation, and consideration of these views. We do not anticipate that this increase in cost will be significant.

Compensation costs

55. Any person who has incurred loss or expense under the provisions may, in certain circumstances, be entitled to compensation. This includes an owner or a former owner of land. Under certain circumstances the community body is to pay for the compensation, under others the Scottish Ministers pay for it. Community bodies can apply to the Scottish Ministers for a grant towards their liability to pay compensation under certain circumstances. Compensation costs will vary from case to case.

Register of applications by communities of neglected and abandoned land

56. It is proposed that all applications by communities to buy neglected and abandoned land will be lodged on a register. It is expected that a register will cost £10,000 to set up, similar to the original costs by the Registers of Scotland in setting up the Register of Community Interests of Land (RCIL) 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

57. There are a number of appeals that can be made by the landowner, community body or another party throughout the provisions, including the appeal of the Scottish Ministers decision on an application, and appeal of the independent valuation. These appeals are made either to the sheriff court in the area where the land to be acquired is located or to the Lands Tribunal of Scotland, as set out in the provisions.

58. The Scottish Tribunals Service (STS) provides administrative support to the LTS. Arrangements for providing funding to the STS for cases to the LTS will be provided on a case-by-case basis. It is envisaged that funds will be reimbursed as cases progress through the LTS.

59. It is difficult to assess at this stage the number of appeal cases that will be heard and it is of course expected that the Scottish Ministers will make robust decisions that stand up to appeal. Costs may have to be borne the person who brings the appeal or by the person who made the decision being appealed. Costs will vary depending on the case and its complexity.

60. The Scottish Ministers will keep the number of appeals under review and remain in close contact with the courts and Lands Tribunal to assess any significant changes in work load.
These documents relate to the Community Empowerment (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 11 June 2014

**Costs on local authorities**

61. It is not anticipated that the provisions should impose any additional costs on local authorities.

**Costs on other bodies, individuals and businesses**

62. The elements of the provisions on community right to buy neglected and abandoned land which may lead to an increase in costs on other bodies, individual and businesses are identified below. However, there is a large degree of uncertainty on the level of costs that may be incurred as it will be up to individual community bodies and landowners in how to use and respond to the provisions, including the need for appropriate legal advice.

**Communities – company limited by guarantee**

63. Model constitution documents allow communities to set up a legal entity as easily and cheaply as possible. Whether communities need to engage a solicitor or other expertise in this process is entirely up to them. The current costs of setting up a company limited by guarantee are negligible, with the Scottish Government’s solicitors checking over drafts before incorporation to ensure compliance.

64. We do not anticipate there to be any significant additional costs on community bodies in setting up a company limited by guarantee.

**Balloting**

65. When making an application to buy abandoned or neglected land community bodies will be required to make their own arrangements to ballot their community and to pay for that ballot to be undertaken.

66. The costs outlined for balloting in paragraphs 35 to 41 above will also apply to community bodies under these provisions. The costs to be met by an individual community body will depend on the size of the community to be balloted and the approach adopted to the ballot. Using the possible models outlined in table 2 above the average cost of each ballot for a community body would be between £1,040 and £5,353.

**Compensation costs**

67. Any person who has incurred loss or expense under the provisions may, in certain circumstances, be entitled to compensation. This includes an owner or a former owner of land. Under certain circumstances the community body is to pay for the compensation, under others the Scottish Ministers pay for it. Community bodies can apply to the Scottish Ministers for a grant towards their liability to pay compensation under certain circumstances. Compensation costs to community bodies will vary from case to case.

**Costs arising from appeals**

68. As indicated in paragraphs 57 to 60 there are a number of appeals that can be made by the landowner, community body or another party throughout the provisions, including the appeal of the Scottish Ministers decision on an application, and appeal of the independent valuation. These
appeals are made either to the sheriff court in the area where the land to be acquired is located or to the Lands Tribunal of Scotland, as set out in the provisions.

69. Costs may have to be borne by a landowner, community body and third parties. Costs will vary depending on the case and its complexity.

PART 5: ASSET TRANSFER REQUESTS

Introduction

70. The public sector owns a wide range of land and buildings throughout Scotland, ranging from forests to schools, hospitals to waterworks. Many communities may wish to take control of assets in their area, enabling them to address local needs and deliver community benefit. This will also contribute to achieving the outcomes set by public sector bodies, and can lead to reduced demand for public services.

71. The Bill seeks to build on existing good practice to ensure that there is consistency in asset transfer processes across the country, while allowing for the very wide range of individual circumstances that will occur on a case by case basis.

72. By making the process more consistent and ensuring public bodies provide a reasoned response to requests, it is hoped the provisions will result in an increasing numbers of asset transfers. To give an indication of the current level of demand, the Community Ownership Support Service, funded by the Scottish Government, works with community groups and local authorities to facilitate asset transfers and has been involved in 38 asset transfers from 2011 to 2014.

73. A core purpose of the legislation is to allow community bodies to identify for themselves which assets would help them develop their communities. It is founded on the principle that the transfer process should be initiated by a community body with an interest in an asset, rather than by public bodies looking to dispose of an asset. We cannot predict how many community bodies may be in that position and it is not possible at this stage to accurately estimate how many asset transfers will take place each year.

74. Subject to an assessment of the overall benefit of a transfer, public bodies, including the Scottish Government and local authorities, may decide to transfer assets at less than market value, which will have a financial consequence for the organisation. This will be done on the basis of a full assessment of the costs and benefits, including predicted savings in the delivery of services and improved local outcomes. The provisions encourage a wide consideration of the value of benefits to the communities which may be enhanced by asset transfer.

Costs on the Scottish Administration and public bodies

75. The costs of these provisions will depend on the arrangements put in place and any additional costs would be met from existing resources.
76. The process for the Scottish Government and other public bodies taking a decision on whether to agree to a request involves an assessment of whether the request would be likely to promote or improve: economic development; regeneration; public health; social wellbeing; or environmental wellbeing, and must take equal opportunities into account. Considering the relevant costs and savings associated with such benefits will be central to the assessment process.

**Costs on local authorities**

77. During the consultation on the Bill local authorities were not able to provide monetary estimates for any costs or savings that may arise as a result of the Bill. This in part reflects the difficulty in predicting how many requests will be made, the wide variety in the types of request that could be made, for example from the use of a small patch of derelict land to the purchase of a large community centre, and the complexity in predicting savings associated with better service provision.

78. As for public bodies above in paragraph 76 the process for a local authority taking a decision on whether to agree to a request involves an assessment of whether the request would be likely to promote or improve: economic development; regeneration; public health; social wellbeing; or environmental wellbeing, and must take equal opportunities into account. Considering the relevant costs and savings associated with such benefits will be central to the assessment process.

**Costs on other bodies, individuals and businesses**

79. The Bill will require a community body making a request to outline the public benefit that would follow from a transfer. Details of what is to be included in a request will be set out in regulations. These are yet to be drafted, but it is expected that they will include the need to demonstrate that any transfer would be financially sustainable in the long term, providing confidence that the proposed benefits can realistically be achieved.

80. It is not possible to accurately predict the cost for individual community bodies that may arise over the next few years as it will be dependent on the type, value and condition of the asset the community body is seeking to own, lease or manage. In addition there will be other costs such as refurbishment or re-development costs, administrative costs, legal fees and specialist advice that will vary from case to case.

81. Recent examples provided by the Community Ownership Support Service highlight the variation in asset transfer costs (not including other administrative etc. costs):
   - Argyll and Bute, outward bound centre, cost £220,000, transferred December 2013
   - Western Isles, old primary school building, cost £10,000, transferred March 2014
   - Highland, old primary school building, cost £50,000, transferred May 2014
82. Forestry Commission Scotland under their National Forest Land Scheme have given a number of communities the opportunity to buy or lease National Forest land. The value of these asset transfers ranges from £5,000 to £1.55 million, as shown in the following table:

<table>
<thead>
<tr>
<th>Asset / forest name</th>
<th>Community organisation</th>
<th>Main future use</th>
<th>Area (ha)</th>
<th>Value (£)</th>
<th>Financial year sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Ardhu and Langa mull forests</td>
<td>North West Mull Community Woodland Company</td>
<td>Community woodland</td>
<td>691.0</td>
<td>£340,000</td>
<td>2006-07</td>
</tr>
<tr>
<td>Slewdrum Forest</td>
<td>Birse Community Trust</td>
<td>Community woodland</td>
<td>167.0</td>
<td>£160,000</td>
<td>2006-07</td>
</tr>
<tr>
<td>Strathmasie Forest</td>
<td>Laggan Forest Trust</td>
<td>Community woodland</td>
<td>19.0</td>
<td>£75,000</td>
<td>2006-07</td>
</tr>
<tr>
<td>Ford</td>
<td>Ford Community Project Ltd</td>
<td>Community centre</td>
<td>2.6</td>
<td>£170,000</td>
<td>2007-08</td>
</tr>
<tr>
<td>Burghead</td>
<td>Burghead Thistle Junior Football Club</td>
<td>Football pitch</td>
<td>1.4</td>
<td>£20,000</td>
<td>2008-09</td>
</tr>
<tr>
<td>Badluarach and Durnamuck</td>
<td>Badluarach and Durnamuck Community Woodland</td>
<td>Community woodland</td>
<td>8.5</td>
<td>£7,000</td>
<td>2009-10</td>
</tr>
<tr>
<td>Acharossan Forest</td>
<td>Kilfinan Community Forest Company</td>
<td>Community woodland</td>
<td>125.0</td>
<td>£130,000</td>
<td>2009-10</td>
</tr>
<tr>
<td>Gaudiedale strip</td>
<td>Bennachie Access Group</td>
<td>Access</td>
<td>0.1</td>
<td>£5,000</td>
<td>2009-10</td>
</tr>
<tr>
<td>Balfour Wood</td>
<td>Birse Community Trust</td>
<td>Community woodland</td>
<td>241.0</td>
<td>£291,000</td>
<td>2010-11</td>
</tr>
<tr>
<td>Rumster Forest</td>
<td>Latheron, Lybster &amp; Clyth Community Development Company</td>
<td>Renewable Energy Scheme</td>
<td>40.0</td>
<td>£80,000</td>
<td>2010-11</td>
</tr>
<tr>
<td>Tormore Forest</td>
<td>Sleat Community Trust</td>
<td>Community woodland</td>
<td>440.0</td>
<td>£330,000</td>
<td>2011-12</td>
</tr>
<tr>
<td>Broadford Wood</td>
<td>Broadford and Strath Community Company</td>
<td>Community woodland</td>
<td>20.0</td>
<td>£35,000</td>
<td>2011-12</td>
</tr>
<tr>
<td>Ardentinny Wall Garden</td>
<td>Ardentinny Community Trust</td>
<td>Visitor attraction</td>
<td>1.4</td>
<td>£10,000</td>
<td>2012-13</td>
</tr>
<tr>
<td>Stronafian</td>
<td>Glendaruel and Colintraive Community Development Trust</td>
<td>Community woodland</td>
<td>615.0</td>
<td>£1,550,000</td>
<td>2012-13</td>
</tr>
</tbody>
</table>
PART 6: COMMON GOOD PROPERTY

Introduction

83. “Common good”, in Scotland, refers to certain assets which were originally acquired by former burghs, and to which title has been passed down to local authorities through successive rounds of local government re-organisation. They include both moveable items (furniture, paintings, regalia etc.) and heritable ones (land and buildings), as well as cash funds which may have been derived from the use or sale of common good property.

84. Audit Scotland stated that at 31 March 2011, councils managed common good assets valued at £219 million. Due to the special status of common good, it has to be accounted for in a particular way, separate from other local authority assets, and there are special rules about its disposal. There is a long history of common law decisions clarifying whether particular items form part of the common good and how they can be used or disposed of.

85. While local authorities should already have details of their common good assets, in line with accounting good practice, this is not always readily available to the public, and there may be disputes about what is included. The aim of this part of the Bill is to increase transparency about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal.

Costs on the Scottish Administration

86. It is not anticipated that the provisions should impose any additional costs on the Scottish Government.

Costs on local authorities

87. The Bill places a new statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. When establishing the register, a proposed list must be published and community councils and other community bodies must be invited to comment on it. The completed register must be made available for inspection and online.

88. Further provisions require local authorities to publish their proposals and consult community councils and other community bodies before disposing of or changing the use of common good assets.

89. These new statutory duties will have costs associated with them. In the consultation, local authorities expressed some concern about the potential resources involved in establishing registers. However, none placed an estimate of monetary value on the process. As local authorities are currently required to account for Common Good assets separately, we can assume that any process required to establish an accessible register will be starting from a very firm foundation.
90. The Bill is not prescriptive about how local authorities should consult on their Common Good registers, and as such it would be for each local authority to decide the method that offers best value for money, while ensuring it is inclusive of everyone who may wish to comment. For example, it may be possible to include common good in existing consultation or engagement processes.

**Costs on other bodies, individuals and businesses**

91. It is not anticipated that the provisions should impose any additional costs on other bodies, individuals and businesses.

**PART 7: ALLOTMENTS**

**Introduction**

92. The Bill replaces the existing legislation relating to allotments, updating and clarifying the requirements on local authorities. The Scottish Government’s National Food and Drink Policy made a clear commitment to strategically support allotments and community growing spaces. These can increase the production of cheap, healthy, locally grown and nutritious food, provide savings in household budgets and increase local self-reliance.

**Costs on the Scottish Administration**

93. It is not anticipated that the provisions should impose any additional costs on the Scottish Government.

**Costs on local authorities**

**Duty to provide allotments**

94. Section 72 of the Bill replaces the existing duty to provide allotments “where the local authority considers there to be a demand” with a requirement to “take reasonable steps” to provide more allotments if the waiting list exceeds a trigger point – when the number of persons who have made a request to lease an allotment is more than half the number of allotments owned or leased by the authority. This will encourage more proactive allotment provision by local authorities.

95. Local authority costs will be dependent on how much provision is required to meet their targets, how much provision is actually possible due to land availability and costs, and factors such as the local cost of land and whether road access, toilets etc. need to be created.

96. Of the 15 local authorities that provided information on costs, 8 have opened new allotment sites in the last 5 years. Estimates on how much this allotment provision had cost ranged from £1,900 to £6,250 per plot, and from £21,000 to £150,000 for a whole site. Seven of the respondents needed no more plots to meet the target that the waiting list should be no more than half of the current number of allotment plots, while others were facing substantial demand.
Duty for local authorities to establish and maintain waiting lists

97. Section 71 requires each local authority to compile and maintain an allotments waiting list. Of the 15 local authorities that responded 11 already hold and maintain waiting lists, suggesting that this requirement will not incur significant increased costs. The estimated costs of maintaining the waiting list varied from £100 to £9,000 a year.

Duty for local authorities to publish an annual report and produce a food growing strategy

98. Local authorities will also be required to publish an annual report and produce a food growing strategy. Much of the information required for this strategy will already have been collected within the Open Space Strategy and Local Development Plan and no significant additional costs are anticipated.

99. Only one of the local authority respondents to the consultation currently produces an annual report with another reporting on accounts only. They estimate their costs in producing the report to be £500 and £1,000.

100. 7 of the 15 local authorities who responded already have or are in the process of producing an Allotments Strategy. Two local authorities estimated the costs of producing their strategy to be £5,000 and £9,350.

PART 8: NON-DOMESTIC RATES

Introduction

101. The Bill includes a power to allow local authorities the discretion to reduce or remit the amount of non-domestic (business) rates leviable by it, in effect this allows them to create localised relief schemes to respond to local needs and demands. Such schemes are to be administered and funded locally and will operate in addition to the current national rates reliefs schemes and centrally set national poundage rate. The poundage is the pence in the pound tax rate used to calculate all business rates bills in Scotland. The total non-domestic rates collected (net of any national mandatory rates reliefs) by local authorities is paid into the Scottish Government non-domestic rates pool and then re-distributed back to local authorities as part of their guaranteed annual local government financial settlement. Any discretionary reliefs awarded by a local authority must be funded from within that authority’s existing resources and not at the expense of the pool.

102. There is no equivalent power for a local authority to levy additional rates on any property or ratepayer.

Costs on the Scottish Administration

103. It is not anticipated that the provisions should impose any additional costs on the Scottish Government.
Costs on local authorities

104. The costs of any locally awarded rates relief scheme are to be met by the Local Authority. Before exercising the power to offer local rates relief, the Local Authority must have regard to the interests of persons liable to pay council tax set by the authority.

105. As the power for local authorities to award rates relief is discretionary the cost to local authorities cannot be estimated given that individual local authority may, or may not choose to use this discretionary power. Local authorities will notify the Scottish Government in the regular non-domestic rates returns which will allow any uptake to be monitored and costed.

Costs on other bodies, individuals and businesses

106. The provisions should not impose any additional costs on other bodies, individuals and businesses as the relief which can be awarded is at the discretion of local authorities and will be funded from within their existing resources.
SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 11 June 2014, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Community Empowerment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 11 June 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Community Empowerment (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)