Community Empowerment (Scotland) Bill

2nd Groupings of Amendments for Stage 2
(Local Government and Regeneration Committee)

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Local authority power of general competence**
1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1162, 1163

**Removal of requirement for participation request to be made by formally constituted body**
1099, 1100, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1113, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1128, 1131, 1132, 1133, 1135, 1136, 1073A, 1138, 1140

*Notes on amendments in this group*
Amendment 1131 is pre-empted by amendment 1130 in the group “Power to decline certain participation requests and asset transfer requests”

**Power to amend meaning of “public service authority” in Part 3 and “relevant authority” in Part 4**
1101, 1141

**Request for public service authorities to work together in outcome improvement process**
1110, 1111

**Support in relation to participation requests and asset transfer requests etc.: regulations, reports, guidance**
1112, 1073, 1073B, 1073C, 1074, 1081, 1081A, 1081B, 1082

**Factors to be considered in decision on whether to agree to participation request or asset transfer request**
1114, 1072, 1115, 1116, 1139, 1146, 1076, 1147, 1149, 1161
Power to decline certain participation requests and asset transfer requests
1127, 1129, 1130, 1158, 1159, 1160

Notes on amendments in this group
Amendment 1130 pre-empts amendment 1131 in the group “Removal of requirement for participation request to be made by formally constituted body”

Right of appeal against refusal of participation request
1134

Involvement of community participation bodies in preparation of report summarising outcome improvement process
1137

Asset transfer requests to cover requests to run services
1142, 1143, 1144, 1148, 1150, 1153, 1155, 1156

Community transfer bodies that may request transfer of ownership of land
1075, 1083

Provision of information in connection with asset transfer requests
1145

Effect of failure to conclude contract following agreement to asset transfer request
1151, 1152

Asset transfer requests: reviews and appeals
1077, 1154, 1088, 1089, 1078, 1090, 1079

Asset transfer requests: disapplication of certain lease restrictions
1157

Duty to publish register of land
1080

Delegation of Forestry Commissioners’ functions
1084

Disposal and use of common good property: consultation
1085, 1086

Procedure for certain orders
1087

Amendments already debated

National outcomes: consultation, procedure and reporting
With 1043 – 1071
Duty to carry out community planning: general
With 1015 – 1038, 1039, 1040, 1041, 1042

Community engagement standards
With 1069 – 1070
Amendments in debating order

Local authority power of general competence

Tavish Scott

1091 After section 13, insert—

<PART
LOCAL AUTHORITY’S POWER OF GENERAL COMPETENCE

Local authority’s general power of competence

(1) A local authority has power to do anything that individuals generally may do.

(2) Subsection (1) applies to things that an individual may do even though they are in nature, extent or otherwise—

(a) unlike anything the authority may do apart from subsection (1), or

(b) unlike anything that other public bodies may do.

(3) In this section “individual” means an individual with full capacity.

(4) Where subsection (1) confers power on the authority to do something, it confers power (subject to sections (Boundaries of the general power) to (Limits on doing things for commercial purposes in exercise of general power) to do it in any way whatever, including—

(a) power to do it anywhere in the United Kingdom or elsewhere,

(b) power to do it for a commercial purpose or otherwise for a charge, or without charge, and

(c) power to do it for, or otherwise than for, the benefit of the authority, its area or persons resident or present in its area.

(5) The generality of the power conferred by subsection (1) (“the general power”) is not limited by the existence of any other power of the authority which (to any extent) overlaps the general power.

(6) Any such other power is not limited by the existence of the general power (but see section (Powers to make supplemental provision)(2)).

Tavish Scott

1092 After section 13, insert—

<Boundaries of the general power

(1) If exercise of a pre-commencement power of a local authority is subject to restrictions, those restrictions apply also to exercise of the general power so far as it is overlapped by the pre-commencement power.

(2) The general power does not enable a local authority to do—

(a) anything which the authority is unable to do by virtue of a pre-commencement limitation, or

(b) anything which the authority is unable to do by virtue of a post-commencement limitation which is expressed to apply—
(i) to the general power,
(ii) to all of the authority’s powers, or
(iii) to all of the authority’s powers but with exceptions that do not include the general power.

(3) The general power does not confer power to make or alter—

(a) arrangements of a kind which may be made under sections 56 (arrangements for discharge of authority’s functions by committees, joint committees, officers etc.) or 62B (establishment of joint boards) of the Local Government (Scotland) Act 1973,
(b) any other arrangements that authorise a person to exercise a function of a local authority.

(4) In this section—

“post-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in an Act passed after [the end of the session of the Scottish Parliament in which this Act is passed], or
(b) is contained in an instrument made under an Act and comes into force on or after the commencement of section (Local authority’s general power of competence),

“pre-commencement limitation” means a prohibition, restriction or other limitation expressly imposed by a statutory provision that—

(a) is contained in this Act, or in any other Act passed no later than [the end of the session of the Scottish Parliament in which this Act is passed], or
(b) is contained in an instrument made under an Act and comes into force before the commencement of section (Local authority’s general power of competence),

“pre-commencement power” means power conferred by a statutory provision that—

(a) is contained in this Act, or in any other Act passed no later than [the end of the session of the Scottish Parliament in which this Act is passed], or
(b) is contained in an instrument made under an Act and comes into force before the commencement of section (Local authority’s general power of competence).

Tavish Scott

1093 After section 13, insert—

<Limits on charging in exercise of general power

(1) Subsection (2) applies where—

(a) a local authority provides a service to a person otherwise than for a commercial purpose, and
(b) its providing the service to the person is done, or could be done, in exercise of the general power.
(2) The general power confers power to charge the person for providing the service to the person only if—

(a) the service is not one that a statutory provision requires the authority to provide to the person,

(b) the person has agreed to its being provided, and

(c) ignoring this section and section 1 of the Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities), the authority does not have power to charge for providing the service.

(3) The general power is subject to a duty to secure that, taking one financial year with another, the income from charges allowed by subsection (2) does not exceed the costs of provision.

(4) The duty under subsection (3) applies separately in relation to each kind of service.

Tavish Scott

1094* After section 13, insert—

<Limits on doing things for commercial purpose in exercise of general power

(1) The general power confers power on a local authority to do things for a commercial purpose only if they are things which the authority may, in exercise of the general power, do otherwise than for a commercial purpose.

(2) Where, in exercise of the general power, a local authority does things for a commercial purpose, the authority must do them through a company.

(3) A local authority may not, in exercise of the general power, do things for a commercial purpose in relation to a person if a statutory provision requires the authority to do those things in relation to the person.

(4) In this section “company” means—

(a) a company within the meaning given by section 1(1) of the Companies Act 2006, or

(b) a registered society within the meaning the Co-operative and Community Benefit Societies Act 2014 or a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969.

Tavish Scott

1095 After section 13, insert—

<Powers to make supplemental provision

(1) If the Scottish Ministers think that a statutory provision (whenever passed or made) prevents or restricts local authorities from exercising the general power, the Scottish Ministers may by regulations amend, repeal, revoke or disapply that provision.

(2) If the Scottish Ministers think that the general power is overlapped (to any extent) by another power then, for the purpose of removing or reducing that overlap, the Scottish Minister may by regulations amend, repeal, revoke or disapply any statutory provision (whenever passed or made).

(3) The Scottish Ministers may by regulations make provision preventing local authorities from doing, in exercise of the general power, anything which is specified, or is of a description specified, in the regulations.
The Scottish Ministers may by regulations provide for the exercise of the general power by local authorities to be subject to conditions, whether generally or in relation to doing anything specified, or of a description specified, in the regulations.

The power under subsection (1), (2), (3) or (4) may be exercised in relation to—

(a) all local authorities,
(b) particular local authorities, or
(c) particular descriptions of local authority.

The power under subsection (1) or (2) to amend or disapply a statutory provision includes power to amend or disapply a statutory provision for a particular period.

Before making regulations under subsection (1), (2), (3) or (4) the Scottish Ministers must consult—

(a) such local authorities,
(b) such representatives of local government, and
(c) such other persons (if any),

as the Scottish Ministers consider appropriate.

Tavish Scott

After section 13, insert—

<Limits on power under section (Powers to make supplemental provision)(1)

(1) The Scottish Ministers may not make provision under section (Powers to make supplemental provision)(1) unless the Scottish Ministers consider that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.

(2) Those conditions are that—

(a) the effect of the provision is proportionate to the policy objective intended to be secured by the provision,

(b) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it,

(c) the provision does not remove any necessary protection,

(d) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise,

(e) the provision is not of constitutional significance.

(3) Regulations under section (Powers to make supplemental provision)(1) may not make provision for the delegation or transfer of any function of legislating.

(4) For the purposes of subsection (3) a “function of legislating” is a function of legislating by order, rules, regulations or other subordinate instrument.

(5) Regulations under section (Powers to make supplemental provision)(1) may not make provision to abolish or vary any tax.

Tavish Scott

After section 13, insert—
Procedure for regulations under section (Powers to make supplemental provision)

(1) If, as a result of any consultation required by section (Powers to make supplemental provision)(7) with respect to proposed regulations under section (Powers to make supplemental provision)(1), it appears to the Scottish Ministers that it is appropriate to change the whole or any part of the Scottish Ministers’ proposals, the Scottish Ministers must undertake such further consultation with respect to the changes as the Scottish Ministers consider appropriate.

(2) If, after the conclusion of the consultation required by section (Powers to make supplemental provision)(7) and subsection (1), the Scottish Ministers consider it appropriate to proceed with the making of regulations under section (Powers to make supplemental provision)(1), the Scottish Ministers must, when laying a draft of the regulations, also lay before the Scottish Parliament an explanatory document explaining the proposals and giving details of—

(a) the Scottish Ministers’ reasons for considering that the conditions in section (Limits on power under section (Powers to make supplemental provision)(1))(2), where relevant, are satisfied in relation to the proposals,

(b) any consultation undertaken under section (Powers to make supplemental provision)(7) and subsection (1),

(c) any representations received as a result of the consultation, and

(d) the changes (if any) made as a result of those representations.

(3) If provision under section (Powers to make supplemental provision)(2) is included in draft regulations under section (Powers to make supplemental provision)(1) laid in the circumstances described in subsection (2), the explanatory document laid with the draft regulations must also explain the proposals under section (Powers to make supplemental provision)(2) and give details of any consultation undertaken under section (Powers to make supplemental provision)(7) with respect to those proposals.

(4) Section (Powers to make supplemental provision)(7) does not apply to regulations under section (Powers to make supplemental provision)(3) or (4) which are made only for the purpose of amending earlier such regulations—

(a) so as to extend the earlier regulations, or any provision of the earlier regulations, to a particular authority or to authorities of a particular description, or

(b) so that the earlier regulations, or any provision of the earlier regulations, ceases to apply to a particular authority or to authorities of a particular description.>

Tavish Scott

1098 After section 13, insert—

<Interpretation of Part

In this Part—

“the general power” means the power conferred by section (Local authority’s general power of competence)(1),

“statutory provision” means a provision of an Act or of an instrument made under an Act.>

Tavish Scott

1162 In section 96, page 76, line 17, after <12(1)> insert—
<( ) section (Powers to make supplemental provision)(1),
( ) section (Powers to make supplemental provision)(2) containing provisions which add to, replace or omit any part of the text of an Act,
( ) section (Powers to make supplemental provision)(3), other than regulations made only for the purpose mentioned in section (Procedure for regulations under section (Powers to make supplemental provision))(4)(b),
( ) section (Powers to make supplemental provision)(4), other than regulations made only for that purpose or for imposing conditions on the doing of things for a commercial purpose,>

Tavish Scott

1163 In schedule 5, page 81, line 30, at end insert—

<Part 3.>

Removal of requirement for participation request to be made by formally constituted body

John Wilson

1099 Leave out section 14

John Wilson

1100 Leave out section 15

John Wilson

1102 In section 17, page 9, line 29, leave out <community participation body> and insert <person or body (“the requester”)>.

John Wilson

1103 In section 17, page 9, line 30, leave out <body> and insert <requester>

John Wilson

1104 In section 17, page 9, line 31, leave out <community participation body> and insert <requester>

John Wilson

1105 In section 17, page 9, line 34, leave out <community participation body considers it> and insert <requester considers the requester>

John Wilson

1106 In section 17, page 9, line 36, leave out <community participation body> and insert <requester>

John Wilson

1107 In section 17, page 9, line 39, leave out <community participation body> and insert <requester>
In section 17, page 9, line 39, leave out <its> and insert <the requester’s>

In section 17, page 10, line 1, leave out <community participation> and insert <persons or>

In section 19, page 10, line 24, leave out <by a community participation body>

In section 19, page 11, line 10, leave out <community participation body> and insert <requester>

In section 19, page 11, line 15, leave out <community participation body> and insert <requester>

In section 20, page 11, line 23, leave out <community participation body> and insert <requester>

In section 20, page 11, line 28, leave out <community participation body> and insert <requester>

In section 20, page 11, line 35, leave out <community participation body> and insert <requester>

In section 21, page 12, line 2, leave out <community participation body> and insert <requester>

In section 21, page 12, line 4, leave out <community participation body> and insert <requester>

In section 21, page 12, line 11, leave out <community participation body> and insert <requester>

In section 22, page 12, line 19, leave out <where>

In section 22, page 12, line 19, at end insert—

<(za) where a public service authority considers that a participation request made to it is frivolous or vexatious, or

(zb) where—

(i)>

In section 22, page 12, line 26, leave out <(1)(b)> and insert <(1)(zb)(ii)>
John Wilson

1131  In section 22, page 12, line 32, leave out from <body> to <that> in line 33 and insert <person or body making a new request is the same person or body as, or a different person or body from, the person or body>

John Wilson

1132  In section 24, page 13, line 4, leave out <community participation body> and insert <requester>

John Wilson

1133  In section 24, page 13, line 5, leave out <community participation body> and insert <requester>

John Wilson

1135  In section 25, page 13, line 19, leave out <community participation body> and insert <requester>

John Wilson

1136  In section 25, page 13, line 22, leave out <community participation body> and insert <requester>

John Wilson

1073A  As an amendment to amendment 1073, line 15, leave out <community participation body> and insert <requester>

John Wilson

1138  In section 26, page 13, leave out lines 34 to 37

John Wilson

1140  In section 26, page 14, line 7, at end insert—

   <“requester” has the meaning given by section 17(1),>

Power to amend meaning of “public service authority” in Part 3 and “relevant authority” in Part 4

Cameron Buchanan

1101  In section 16, page 8, line 34, leave out subsection (2)

Cameron Buchanan

1141  In section 51, page 48, line 2, leave out subsection (2)

Request for public service authorities to work together in outcome improvement process

Tavish Scott

1110  In section 17, page 10, line 2, at end insert—
A participation request may include a request that one or more public service authorities other than the authority to which the request is made participate in the outcome improvement process along with the authority to which the request is made.

Tavish Scott

1111 In section 18, page 10, line 19, at end insert—

<( ) the procedure to be followed by public authorities in relation to requests that include a request of the type mentioned in section 17(3A).>

Support in relation to participation requests and asset transfer requests etc.: regulations, reports, guidance

Alex Rowley

1112 In section 18, page 10, line 21, at end insert <,

( ) ways in which public service authorities are to promote the use of participation requests,

( ) support that public service authorities are to make available to community participation bodies to enable such bodies to make a participation request and participate in any outcome improvement process resulting from such a request,

( ) types of communities that may need additional support in order to form community participation bodies, make participation requests and participate in outcome improvement processes.

Marco Biagi

1073 After section 25, insert—

<Annual reports

(1) A public service authority must publish a participation request report for each reporting year.

(2) A participation request report is a report setting out, in respect of the reporting year to which it relates—

(a) the number of participation requests the authority received,

(b) the number of such requests which the authority—

(i) agreed to, and

(ii) refused,

(c) the number of such requests which resulted in changes to a public service provided by or on behalf of the authority, and

(d) any action taken by the authority—

(i) to promote the use of participation requests,

(ii) to support a community participation body in the making of a participation request.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.>
John Wilson

1073B As an amendment to amendment 1073, line 16, at end insert—

<() A participation request report must be published no later than the last working day in May following the end of each reporting year.>

John Wilson

1073C As an amendment to amendment 1073, line 17, at end insert—

<“working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.>

Marco Biagi

1074 After section 25, insert—

Guidance

(1) A public service authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.

Marco Biagi

1081 After section 61, insert—

Annual reports

(1) A relevant authority must publish an asset transfer report for each reporting year.

(2) An asset transfer report is a report setting out, in respect of the reporting year—

(a) the number of asset transfer requests the relevant authority received,

(b) the number of such requests which the relevant authority—

(i) agreed to, and

(ii) refused,

(c) the number of such requests made to the relevant authority which resulted in—

(i) a transfer of ownership of land to a community transfer body,

(ii) a lease of land to such a body,

(iii) rights in respect of land being conferred on such a body,

(d) the number of appeals under section 58 relating to such requests made to the relevant authority that have—

(i) been allowed,

(ii) been dismissed,

(iii) resulted in any part of the decision of the authority being varied or reversed,
(e) in relation to a decision of the relevant authority reviewed under section 59 or (Review of decisions by the Scottish Ministers), the number of such decisions that have been—

(i) confirmed,

(ii) modified,

(iii) substituted by a different decision, and

(f) any action taken by the relevant authority during the reporting year—

(i) to promote the use of asset transfer requests,

(ii) to support a community transfer body in the making of an asset transfer request.

(3) In this section, “reporting year” means a period of one year beginning on 1 April.

John Wilson

1081A As an amendment to amendment 1081, line 29, at end insert—

<( ) An asset transfer report must be published no later than the last working day in May following the end of each reporting year.>

John Wilson

1081B As an amendment to amendment 1081, line 30, at end insert—

<“working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.>

Marco Biagi

1082 After section 61, insert—

<Guidance

(1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions by the authority under this Part.

(2) Before issuing such guidance, the Scottish Ministers must consult such persons as they think fit.>

Factors to be considered in decision on whether to agree to participation request or asset transfer request

Cameron Buchanan

1114 In section 19, page 10, leave out lines 32 to 38

Marco Biagi

1072 In section 19, page 10, line 38, at end insert—

<( ) whether agreeing to the request would be likely—>
(i) to reduce inequalities of outcome which result from socio-economic disadvantage,

(ii) to lead to an increase in participation in the outcome improvement process to which the request relates by persons who experience socio-economic disadvantage,

(iii) otherwise to lead to an increase in participation by such persons in the design or delivery of a public service the provision of which results in, or contributes to, the specified outcome mentioned in the request.

Cameron Buchanan

1115 In section 19, page 11, line 1, leave out <other>

Cameron Buchanan

1116 In section 19, page 11, line 4, leave out subsection (4)

Cameron Buchanan

1139 In section 26, page 14, leave out lines 1 to 3

Cameron Buchanan

1146 In section 55, page 51, leave out lines 3 to 8

Marco Biagi

1076 In section 55, page 51, line 8, at end insert—

   <( ) whether agreeing to the request would be likely to reduce inequalities of outcome which result from socio-economic disadvantage,>

Cameron Buchanan

1147 In section 55, page 51, line 9, leave out <other>

Cameron Buchanan

1149 In section 55, page 51, line 21, leave out subsection (4)

Cameron Buchanan

1161 In section 62, page 57, leave out lines 28 to 30

**Power to decline certain participation requests and asset transfer requests**

Cameron Buchanan

1127 In section 22, page 12, line 25, after <may> insert <, except where the body making the new request is a different body from that which made the previous request.>

Cameron Buchanan

1129 In section 22, page 12, line 31, at end insert <, and

   ( ) there are no other significant differences between the two requests.>
Right of appeal against refusal of participation request

Alex Rowley

1134 After section 24, insert—

<Appeals

Appeals

(1) Subsection (2) applies where—

(a) a participation request is refused by a public service authority, or
(b) a public service authority agrees to a participation request from a community participation body and issues a decision notice as mentioned in—

(i) section 20(2), but the body has significant concerns about provisions within the decision notice (whether relating to that body’s participation in the outcome improvement process described in the decision notice or that process more generally), or
(ii) section 20(3), but after making representations under section 21(2), the body still has significant concerns about provisions within the decision notice or the notice given to the body under section 21(5) (whether relating to that body’s participation in the outcome improvement process or that process more generally).

(2) The community participation body may appeal to the Scottish Ministers.

(3) The Scottish Ministers may by regulations prescribe—

(a) the procedure to be followed in connection with appeals under subsection (2),
(b) the manner in which such appeals are to be conducted, and
(c) the time limits within which such appeals must be brought.

(4) On an appeal under subsection (2), the Scottish Ministers may—

(a) direct the public service authority—
(i) in the case of an appeal by virtue of subsection (1)(a), to agree to participation request,

(ii) in the case of an appeal by virtue of subsection (1)(b), to make such alterations to the decision notice (or, as the case may be, the notice issued under section 21(5)) as the Scottish Ministers specify, or

(b) dismiss the appeal.

(5) A direction under subsection (4)(a) may specify particular information that is to be included in the decision notice to be issued as a consequence of the participation request being agreed to.

Involvement of community participation bodies in preparation of report summarising outcome improvement process

Alex Rowley

1137 In section 25, page 13, line 25, at end insert—

<(2A) In preparing the report mentioned in subsection (2), the public service authority must seek the views of the bodies mentioned in subsection (2B) in relation to—

(a) the way in which the outcome improvement process was conducted, and

(b) the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved.

(2B) The bodies referred to in subsection (2A) are—

(a) the community participation body which made the participation request to which the outcome improvement process related, and

(b) any other community participation bodies which participated in that process.>

Asset transfer requests to cover requests to run services

Tavish Scott

1142 In section 52, page 48, line 38, at end insert <, or

(c) in relation to a service provided (or the provision of which is secured) by a relevant authority, for the community transfer body to provide the service (or part of the service).>

Tavish Scott

1143 In section 52, page 49, line 7, after <land> insert <or service (or part of the service)>

Tavish Scott

1144 In section 52, page 49, line 8, leave out <or (b)(ii)> and insert <, (b)(ii) or (c)>

Tavish Scott

1148 In section 55, page 51, line 11, after <land> insert <or service (or part of the service)>
Tavish Scott

1150 In section 56, page 52, line 2, leave out subsection (1) and insert—

< (1) Where a relevant authority decides to agree to an asset transfer request made by a community transfer body under—

(a) section 52(2)(a) or (b), subsections (2) to (10) apply,
(b) section 52(2)(c), subsection (11) applies.>

Tavish Scott

1153 In section 56, page 53, line 2, at end insert—

<(11) The decision notice relating to the request must specify the terms on which, and any conditions subject to which, the authority would be prepared to transfer responsibility to provide the service (or part of the service).>

Tavish Scott

1155 In section 58, page 54, line 21, at end insert <, as the case may be, transfer responsibility to provide the service (or part of the service), or>

Tavish Scott

1156 In section 58, page 54, line 29, at end insert—

<(a) in the case of an appeal relating to an asset transfer request under section 52(2)(c), specifying the terms on which, and any conditions subject to which, the authority would be prepared to transfer responsibility to provide the service (or part of the service), or
(b) in the case of an appeal relating to an asset transfer request under section 52(2)(a) or (b)—>

Community transfer bodies that may request transfer of ownership of land

Marco Biagi

1075 In section 53, page 49, line 28, at end insert—

< ( ) it is a community benefit society the registered rules of which include provision that the society must have not fewer than 20 members.>

Marco Biagi

1083 In section 62, page 57, line 23, at end insert—

<“community benefit society” means a registered society (within the meaning of section 1 of the Co-operative and Community Benefit Societies Act 2014) registered as a community benefit society under section 2 of that Act; and “registered rules” has the meaning given by section 149 of that Act (as that meaning applies in relation to community benefit societies).>
Provision of information in connection with asset transfer requests

Alex Rowley

1145 In section 54, page 50, line 32, at end insert—

   <(4) Without prejudice to the generality of subsection (3), regulations under that subsection must require a relevant authority, on request, to provide a community transfer body with such of the pieces of information listed in subsection (5) as are relevant to the body’s proposed asset transfer request.

(5) Those pieces of information are—

   (a) the—

      (i) sale value,

      (ii) annual rental value,

      of the land to which the asset transfer request relates,

   (b) the annual running costs associated with that land,

   (c) details (including the cost) of any repairs or maintenance likely to be required in connection with that land of which the relevant authority is aware but which it does not expect to have undertaken prior to the asset transfer request being made,

   (d) the energy efficiency of that land.>

Effect of failure to conclude contract following agreement to asset transfer request

Cameron Buchanan

1151 In section 56, page 52, line 25, at beginning insert <Subsection (6A) applies>

Cameron Buchanan

1152* In section 56, page 52, line 26, leave out from first <the> to <not> in line 27 and insert <.

   (6A) A failure to conclude a contract as mentioned in subsection (5) is>

Asset transfer requests: reviews and appeals

Marco Biagi

1077 In section 58, page 53, line 38, at end insert <, or

   (c) a person, or a person that falls within a class of persons, specified in an order made by the Scottish Ministers for the purposes of this section.>

Cameron Buchanan

1154 In section 58, page 54, line 8, leave out from <any> to end of line 9 and insert <those parts of the decision of the relevant authority to which the appeal relates,>
THIS IS NOT THE MARSHALLED LIST

(b) must be issued within—

(i) a period prescribed in regulations made by the Scottish Ministers, or

(ii) such longer period as may be agreed between the local authority and the community transfer body that made the asset transfer request.

Michael Russell

1089 In section 59, page 56, line 7, at end insert—

<( ) In section 56 of the Local Government (Scotland) Act 1973 (arrangements for the discharge of functions by local authorities), after subsection (6A) insert—

“(6B) The duty to carry out a review of a case imposed on an authority under section 59(2) of the Community Empowerment (Scotland) Act 2015 (reviews by local authorities of asset transfer requests) must be discharged only by the authority or a committee or sub-committee of the authority; and accordingly no such committee or sub-committee may arrange for the discharge under subsection (2) of the duty by an officer of the authority.”.

Marco Biagi

1078 After section 59, insert—

<Review of decisions by the Scottish Ministers

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to the Scottish Ministers by a community transfer body, and

(b) the Scottish Ministers—

(i) refuse the request,

(ii) agree to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) do not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) On an application made by the community transfer body, the Scottish Ministers must carry out a review of the case.

(3) The Scottish Ministers may by regulations make provision about reviews carried out under subsection (2) including, in particular, provision in relation to—

(a) the procedure to be followed in connection with reviews,

(b) the appointment of such persons, or persons of such description, as may be specified in the regulations for purposes connected with the carrying out of reviews,

(c) the functions of persons mentioned in paragraph (b) in relation to reviews (including a function of reporting to the Scottish Ministers),

(d) the manner in which reviews are to be conducted, and

(e) the time limits within which applications for reviews must be brought.

(4) The provision that may be made by virtue of subsection (3) includes provision that—
(a) the manner in which a person appointed by virtue of paragraph (b) of that subsection carries out the person’s functions in relation to a review, or any stage of a review, is to be at the discretion of the person,

(b) the manner in which a review, or any stage of a review, is to be carried out by the Scottish Ministers is to be at the discretion of the Scottish Ministers.

(5) Having regard to any report they receive by virtue of subsection (3)(c), the Scottish Ministers may, in relation to a decision reviewed under subsection (2)—

(a) confirm the decision,

(b) modify the decision, or any part of the decision (including any terms and conditions specified in the decision notice to which the asset transfer request relates), or

(c) substitute a different decision for the decision.

(6) Following a review under subsection (2), the Scottish Ministers must—

(a) issue a decision notice as respects the asset transfer request to which the review relates, and

(b) provide in the decision notice the reasons for their decision.

(7) A decision notice issued under subsection (6) replaces any decision notice relating to the asset transfer request in respect of which the review was carried out.

(8) Subsections (3) to (5) of section 55 apply in relation to a decision relating to an asset transfer request in a review under subsection (2) of this section as they apply in relation to a decision relating to the request under subsection (2) of that section.

(9) Section 56 applies in relation to a decision to agree to an asset transfer request (including a decision to confirm such an agreement) following a review under subsection (2) as it applies in relation to a decision mentioned in subsection (1) of that section.>

Michael Russell

1090 After section 59, insert—

<Appeals from reviews under section 59

(1) Subsection (2) applies in a case where, following a review carried out under section 59(2), a local authority—

(a) refuses the asset transfer request to which the review relates,

(b) agrees to the request but the decision notice issued under section 59(6) specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(c) does not issue the decision notice within the prescribed period mentioned in sub-paragraph (i) or (where applicable) (ii) of paragraph (b) of subsection (7) of section 59.

(2) The community transfer body making the asset transfer request may appeal to the Scottish Ministers.
(3) Subsections (3) to (10) of section 58 apply to an appeal under subsection (2) of this section as they apply to an appeal under subsection (2) of that section, subject to the modification that any references to the relevant authority in the subsections so applied are to be read as references to the local authority mentioned in subsection (1) of this section.

Marco Biagi

1079 After section 59, insert—

<Decisions by relevant authority specified under section 58(2)(c): reviews

(1) Subsection (2) applies in a case where—

(a) an asset transfer request is made to a relevant authority specified in an order under section 58(2)(c), and

(b) the relevant authority—

(i) refuses the request,

(ii) agrees to the request but the decision notice relating to the request specifies material terms or conditions which differ to a significant extent from those specified in the request, or

(iii) does not give a decision notice relating to the request to the community transfer body within the period mentioned in paragraph (a) or (where applicable) paragraph (b) of section 55(8).

(2) Subsections (2) to (9) of section 59 apply to the case mentioned in subsection (1).

(3) Subsection (2) is subject to subsection (4).

(4) The Scottish Ministers may by order—

(a) make provision for subsections (2) to (9) of section 59 to apply as mentioned in subsection (2) subject to such modifications (if any) as they think appropriate,

(b) specify, in relation to an application for a review under section 59(2) applied as mentioned in subsection (2)—

(i) the local authority to which the application is to be made,

(ii) factors determining the local authority to which the application is to be made.>

Asset transfer requests: disapplication of certain lease restrictions

Cameron Buchanan

1157 Leave out section 60

Duty to publish register of land

Marco Biagi

1080 After section 61, insert—
Duty to publish register of land

(1) Each relevant authority must establish and maintain a register of land mentioned in subsection (2).

(2) The land is land which, to the best of the authority’s knowledge and belief, is owned or leased by the authority.

(3) Every relevant authority must—

(a) make arrangements to enable members of the public to inspect, free of charge, its register of land at reasonable times and at such places as the authority may determine, and

(b) make its register of land available on a website, or by other electronic means, to members of the public.

(4) The Scottish Ministers may by regulations specify land, or descriptions of land, that a relevant authority need not include in its register of land.

(5) Relevant authorities must have regard to any guidance issued by the Scottish Ministers in relation to the duties imposed on the authorities under this section.

(6) Before issuing such guidance, the Scottish Ministers must consult the relevant authorities.

(7) The omission of any land owned or leased by a relevant authority from the authority’s register of land does not prevent an asset transfer request being made in respect of the land.

Delegation of Forestry Commissioners’ functions

Marco Biagi

1084 After section 62, insert—

<PART

DELEGATION OF FORESTRY COMMISSIONERS’ FUNCTIONS

Meaning of “community body” in Forestry Act 1967

(1) Section 7C of the Forestry Act 1967 (delegation of functions under section 7B: community bodies) is amended as follows.

(2) In subsection (1)—

(a) for the words from “company”, where it first occurs, to “include” substitute “body corporate having a written constitution that includes”;

(b) for the word “company”, wherever it appears in paragraphs (a) to (e), substitute “body”;

(c) after paragraph (d) insert—

“(da) provision that membership of the body is open to any member of the community,

(db) a statement of the body’s aims and purposes, including the promotion of a benefit for the community, “, and
(d) in paragraph (e), for “and the auditing of its accounts” substitute “, and

(f) provision that any surplus funds or assets of the body are to be applied for the benefit of the community.”.

(3) In subsection (2), for “(d)” substitute “(db)”.

(4) Subsections (4) to (6) are repealed.