

## INTRODUCTION

1. The [Community Empowerment \(Scotland\) Bill](#) (“the Bill”) was introduced on 11 June 2014 by the Scottish Government (“the Government”). As with all bills, it was accompanied by a Financial Memorandum (FM) (page 51 of the [Explanatory Notes](#)) which set out the estimated financial implications of the Bill’s provisions.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s FM. In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

## THE BILL

3. The FM states that 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 FM states that it sets out the costs associated with the following parts of 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.
- **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 ploholders.
- **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. A table summarising the additional costs expected to arise as a result of the Bill's provisions is provided on pages 52 to 60 of the FM.

## EVIDENCE

6. The Committee received 16 responses to its call for evidence on the FM, around half of which were from local authorities. Responses were also received from organisations including COSLA, Highlands and Islands Enterprise (HIE), NHS Lothian, The Office of the Scottish Charities Regulator (OSCR), the Scottish Environmental Protection Agency (SEPA), the Scottish Property Federation (SPF) and SportScotland. All written evidence is available [on the Committee's website](#).

7. The Committee also received a letter dated 3 October 2014<sup>1</sup> from the Minister for Local Government and Planning ("the Minister") which provided further financial information with regard to forecasting the use of participation requests and asset transfer requests.

8. The letter highlighted the difficulties the Government and stakeholders had faced in estimating the financial impacts of the Bill, but provided "examples based on current practice to show the level of resource and costs that may be involved in both participation requests and asset transfer requests."

9. At its meeting on 8 October the Committee took oral evidence on the FM from the Scottish Government Bill Team. The Official Report of the evidence session can be found on the Parliament's website via the following link: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9573&mode=pdf>

### Issues highlighted in evidence

10. A number of written comments were received in respect of specific aspects of the Bill and their estimated financial impacts as set out in the FM. The Committee then raised a number of these points in its oral evidence session with the Bill Team.

11. However, several respondents also commented on the possible financial implications of the Bill as a whole and expressed concerns regarding its overall

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<sup>1</sup> [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014](#)

impact on their budgets. Given that some of the Bill's costs are expected to be demand driven, the Committee notes that the FM does not fully quantify the total estimated financial implications of the Bill.

## General Comments

12. A number of general comments about the FM were received with several respondents acknowledging the difficulty in predicting demand. HIE for example, stated that—

“The FM makes a good ‘estimate’ of ‘unit costs’ for aspects of the Bill’s delivery, in many cases providing ranges where those are informative, however, the inability to profile demand take up makes it impractical for the FM to estimate the total costs that might be expected in say the first three years of operation.”<sup>2</sup>

13. Several local authorities, however, foresaw difficulties in meeting the costs of the Bill and called for additional resources from central government. East Lothian Council for example, stated that—

“Local government will incur extra cost as a result of these provisions (which constitute a new legislative burden) and it is not possible to allocate money to these costs from within our budgets without taking it from other activities. We would expect central Government to add to our settlement any money necessary to fulfil the provisions of the Bill.”<sup>3</sup>

14. Glasgow City Council echoed this view stating that likely additional costs on local authorities were not quantified to any reliable extent in the FM due to difficulties in predicting demand and activity. However, it stated “that the costs will be significant and that local authorities will find it challenging to meet these costs from existing resources.”<sup>4</sup>

15. Inverclyde Council also stated that there was “no evidence” to support the FM’s assertion that costs, in many cases, would be minimal and able to be contained within existing budgets. In its view, this was “not the case” and there was no additional fund within the Council to absorb any demand.<sup>5</sup>

16. Similar suggestions that additional resources would be required to implement the Bill’s provisions were made by other respondents including North Lanarkshire Council and North Ayrshire Council which stated that—

“Where costs have been included in the narrative the ranges are sufficiently wide to accommodate a huge amount of uncertainty. However in other

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<sup>2</sup> [Highland and Islands Enterprise, written submission](#)

<sup>3</sup> [East Lothian Council, written submission](#)

<sup>4</sup> [Glasgow City Council, written submission](#)

<sup>5</sup> [Inverclyde Council, written submission](#)

sections there is no mention of costs but it does mention there will be additional costs incurred. The implication is that the additional costs will be minimal but there is uncertainty that is not addressed in the bill.”<sup>6</sup>

17. However, North Ayrshire Council also stated that “in the main the council was in agreement with the financial implications contained in the Bill.”

18. COSLA also acknowledged the difficulties in quantifying demand—

“it is difficult to anticipate the uptake and demand that will be placed upon Local Authorities. This makes it very difficult to quantify the financial cost that will be placed upon local government in complying with the legislation and indeed the Financial Memorandum makes no attempt to quantify a cost for these areas of the proposed legislation...

COSLA seeks reassurance that further work be undertaken to better quantify these costs before the Community Empowerment (Scotland) Bill is passed.”<sup>7</sup>

19. When asked about the work it had undertaken to attempt to anticipate demand and to ensure local authorities are adequately resourced to effectively deliver the Bill’s measures, the Bill Team explained that work had been undertaken prior to publication of the Bill. However, it stated that “little financial information and cost information was provided by others” in response to its consultations and it had “found it difficult to amass information on how the legislation might be used” meaning that “it was difficult to consider what demand might be.”<sup>8</sup>

20. The Bill Team explained that, as communities are not homogenous and will have different priorities and needs which could not be amalgamated into a single demand profile, it “will be hard to predict what communities will do.” It further pointed out that “no one else has been able to do it either.”<sup>9</sup>

21. In response to concerns expressed by the Committee that the Bill might raise expectations where there was insufficient support available to meet them, the Bill Team explained that, the Government had a general convention that it would provide additional funding where new costs had arisen from legislation. However—

“The difficulty with the bill is that we cannot quantify that funding at the moment. That additional funding would need to be demonstrated and quantified through practice. That would happen through the normal processes and the funding would be provided in that way.”<sup>10</sup>

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<sup>6</sup> [North Ayrshire Council, written submission](#)

<sup>7</sup> [COSLA, written submission](#)

<sup>8</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48](#)

<sup>9</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48](#)

<sup>10</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49](#)

22. When questioned about how the funding mechanism would work, given the impossibility of estimating figures, the Bill Team replied—

“We cannot say at this time. If local authorities can demonstrate and quantify what the new duties in the bill have cost them, that will be part of the on-going process of local authority settlements.”<sup>11</sup>

23. Given that the Bill was expected to take effect during financial year 2015-16 and the draft budget for that year was expected to be published imminently, the Committee asked how much would be set aside to cover the costs of the Bill’s provisions. In response the Bill Team stated—

“We are not anticipating any particular financial burden in 2015-16. COSLA is right to say that it will not be overly onerous and therefore could be encapsulated within current resources. However, we recognise that additional funding might be required in the future.”<sup>12</sup>

24. When it was pointed out that COSLA’s position appeared to be that whilst the costs of the Bill’s individual elements might not be overly onerous, overall costs had the potential to be so, the Bill Team acknowledged this point but stated that it did not agree that overall costs had the potential to be significant. It confirmed that it believed that—

“the cost can be managed within current resources, with some addition if the demand is more than local authorities can cope with.”<sup>13</sup>

25. In the event that costs did turn out to be greater than expected as a direct consequence of the Bill, The Bill Team confirmed that—

“That would be part of the normal discussions with local authorities through the annual budgeting process. Local authorities would have to demonstrate and quantify what was involved and then go into discussions with the Scottish Government”<sup>14</sup>

26. However, the Bill Team further stated that it would be for the Minister for Local Government and Planning to respond more fully to this question.

**27. The Committee invites the lead committee to seek clarity from the Minister regarding whether and by what mechanism additional funding will be made available for local authorities should they incur significant additional costs as a result of the Bill.**

**28. With particular regard to Parts 3 and 5 of the Bill, the lead committee may wish to explore the issue of how the Government can be confident that any**

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<sup>11</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54](#)

<sup>12</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55](#)

<sup>13</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55](#)

<sup>14</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55](#)

**additional costs can be managed within current resources, given that costs are expected to be demand driven.**

29. In response to questions from the Committee about whether there was a risk that, had the FM presented more concrete estimates of potential demand and costs, these might have been seen as “an upper limit for how much could be done”, the Bill Team agreed—

“Absolutely: demand will be led by communities, so we cannot work in that way. If we set a limit, that will confine the process and box it in.”<sup>15</sup>

30. Expanding on this point, the Bill Team explained that it did not wish to set a benchmark as “we want the legislation to be successful and we want as many communities as possible to use it—it is for the communities to use and not for us to tell them to use it.”<sup>16</sup>

31. Towards the end of the evidence session, the Committee drew attention to Standing Orders rule 9.3.2 which states that—

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”<sup>17</sup>

32. When asked whether the FM met these criteria, The Bill Team explained—

“We attempted to include costs in the financial memorandum in a number of places where we believed that we could actually indicate what the costs will be. In some areas, we know that the costs under the current provisions are fairly low, for example, and we therefore have an idea of what the costs may be in the future.

We express a caveat a number of times about the margins of uncertainty, because to attempt to state what the bill might cost in future would be unreasonable and potentially misleading.”<sup>18</sup>

33. Following the oral evidence session the Convener wrote to the Minister<sup>19</sup> seeking an explanation of how the FM met the requirements of Standing Orders and

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<sup>15</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52](#)

<sup>16</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52](#)

<sup>17</sup> [Standing Orders of the Scottish Parliament](#)

<sup>18</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 58](#)

<sup>19</sup> [Letter from Convener to Minister for Local Government and Planning dated 14 October 2014](#)

also of the Scottish Government's own guidance on Financial Memoranda (SG 2009/1).<sup>20</sup>

34. The Committee received a letter from the Minister dated 24 October<sup>21</sup> which confirmed his view that the FM did meet the requirements of Standing Orders and had been conducted in line with the Government's guidance.

35. The letter highlighted the work that had been undertaken with stakeholders in order to estimate unit costs and noted that the FM had provided examples of costs arising from similar processes—

“Thus the FM and the additional information supplied contains the full range of financial information that can be made available with certainty in relation to this Bill.”

36. However, the letter also stated that “the FM cannot estimate the level of demand for asset transfer or participation requests, and consequently does not provide ranges for the total potential costs of these provisions.” This, the Minister explained, was intended to avoid giving a flawed figure as the variables inherent to the Bill in terms of “the number of requests, their complexity and their distribution over time” “would make a specific figure or range far too questionable.”

37. Therefore, the letter concluded—

“the information provided is clearly the best estimate that can be provided of the administrative, compliance and other costs to which the provisions of the Bill would give rise, the best estimate of the timescales over which such costs would arise and has given a very clear indication of the margins of uncertainty in such estimates.”

**38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.**

**39. The Committee invites the lead committee to ask the Minister what plans are in place to ensure that any costs arising from the Bill will be monitored on an ongoing basis. It also invites the lead committee to seek clarity regarding the funding mechanism by which resources will be made available to local authorities in the event that such costs prove to be significant.**

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<sup>20</sup> [Scottish Government Guidance Note 2009/01: Financial Memoranda that accompany Scottish Government Bills](#)

<sup>21</sup> [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

## Part 2: Community Planning

40. The FM states that the Bill seeks to strengthen CPPs by placing 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.” It explains that some of these bodies are already statutory community planning partners, whilst others are not, although in practice they “frequently participate in community planning.”

41. The FM states that “for those public 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 costs” (such as costs relating to travel or staff time).

42. Similarly, the FM states that “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.”

43. COSLA’s written submission agreed that any additional costs arising from this part of the Bill “would appear to be minimal.”<sup>22</sup>

44. SEPA expressed surprise that it had been designated as a public body for community planning and expressed concerns about “false expectations that SEPA will fully engage with all CPPs in Scotland” stating that this would be “highly resource intensive and not cost neutral”, especially if it did not “have the flexibility to tailor our engagement with different CPPs, and to deploy our limited resource where we can add the most value.”<sup>23</sup>

45. The Bill Team confirmed that SEPA would be a partner to the 32 CPPs across Scotland, but pointed out that the Bill did not stipulate what the level of engagement with each CPP should be. Therefore, “how SEPA engages will be flexible and will be decided in collaboration with CPP partners, so we do not necessarily see the same resource issues as SEPA does.”<sup>24</sup>

## Part 3: Participation Requests

46. The FM states that the Bill will enable community bodies to seek to participate, along with a public body, in a process to improve the outcome of a service delivered by that public body. Public bodies will only be able to decline a request for dialogue where there are “reasonable grounds” to do so and will be required to publish a report at the end of the process.

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<sup>22</sup> [COSLA, written submission](#)

<sup>23</sup> [Scottish Environmental Protection Agency, written submission](#)

<sup>24</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 50](#)

47. The FM acknowledges that public bodies (including local authorities) are likely to incur costs in responding to participation requests. However, it provides no estimates of what these potential costs might be, stating that “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.”

48. Expanding on this point in oral evidence, the Bill Team gave the example of one local authority area where demand for participation requests might be very low as the public authorities were already excelling in public engagement and participation as opposed to another area which might have low demand as a result of lack of capacity in the community. This scenario, it suggested, highlighted the difficulties in attempting to estimate the demand profile across Scotland.

49. The Bill Team also suggested that demand might increase over time as communities became increasingly aware of their new rights—

“When people see such requests being used, they might catch on. If people see them having an impact in their local area, demand may increase from that. It all depends on what communities want to do and how they want to use the provisions.”<sup>25</sup>

50. In response to questioning as to why other FMs previously scrutinised by the Committee where costs were also expected to be demand driven had set out approximate upper and lower limits, albeit with appropriate caveats, yet this one did not, the Bill Team explained that any such ranges would “be too large to be considered worthwhile.” Levels of demand, it stated, would only be seen when the Bill took effect.<sup>26</sup>

51. Expanding on this, the Bill Team continued—

“There are too many variables to factor into what would be a reasonable demand profile, or a reasonable idea of how many requests could come forward. We have gone back to what the unit cost might be and, as COSLA says, it is not overly onerous.”<sup>27</sup>

52. When asked to give an example of a piece of previous legislation for which the costs had been similarly unquantifiable the Bill Team confirmed that it had looked but had been unable to find a similar example.

53. The letter from the Minister dated 24 October explained that “there is no existing community-led mechanism comparable to participation requests on which to

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<sup>25</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 57](#)

<sup>26</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 53](#)

<sup>27</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54](#)

base estimates of demand” and highlighted the uncertainties over uptake of participation requests and the work required to respond to them.<sup>28</sup>

**54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.**

55. The FM also states that public bodies (including local authorities) will incur costs in relation to the provision of an outcome improvement process, although again, no estimates are provided. Two examples of the costs incurred by a local authority in relation to community engagement events (ranging from £1,100 to £41,000) are provided with the FM stating that they mainly related to staffing costs.

56. HIE agreed that there were “inevitable uncertainties” associated with the extent to which communities would seek to utilise the opportunities presented by the Bill, but anticipated that communities in its area would wish to engage strongly and utilise the new powers conferred by it. However, with regard to participation requests it expected that it would be able to absorb them “to a large extent within the costs of staff time currently devoted to on-going business improvement activities.”<sup>29</sup>

57. COSLA’s submission drew parallels between the potential impact of participation requests and that of the existing Freedom of Information laws and expressed concerns about the associated administrative burden. However, the Bill Team stated that the Bill was not directly comparable to the Freedom of Information Act 2000 as it applied to everyone whilst participation requests would only apply to community bodies which met the criteria set out by the Bill. Furthermore, any such requests would then be assessed against certain criteria meaning that demand would be more limited.

### *Capacity Building*

58. A number of respondents raised the topic of “capacity building” in community bodies with NHS Lothian, for example, suggesting that the FM’s costs were “arguably understated” and noting that its original consultation response had stated that—

“community bodies may not possess the relevant skills, experience or knowledge to allow them to be meaningfully or effectively involved. Public service authorities would therefore need to consider how they could provide support for capacity building. This could add pressure to public service authorities from an already under-resourced position.... There does not seem to be consideration in the bill that addresses the inevitable financial

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<sup>28</sup> [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

<sup>29</sup> [Highland and Islands Enterprise, written submission](#)

and capacity implications of participation for community bodies in the improvement process.”<sup>30</sup>

59. NHS Lothian also drew attention to the impact of the Bill in terms of tackling inequalities in Scotland, stating that—

“there needs to be specific regard made to what support infrastructures are in place to empower our less equipped communities, if not, the bill will further increase the inequalities gap between communities, some of whom are well equipped and able to articulate their needs while some will struggle to be heard/access this empowerment opportunity.

Without appropriate support and investment in community empowerment the key components of the Bill will not be fairly accessible to communities (both geographic or communities of interest).”<sup>31</sup>

60. East Lothian Council stated that, in order to assist community groups to develop the capacity to take on the opportunities and challenges represented by the Bill, appropriate consideration should be given to the provision of adequate resources nationally “rather than assuming that local authorities will be able to find the resources from current spending allocations.”<sup>32</sup>

61. This view was echoed by South Lanarkshire Council, which suggested that additional resource was required to establish appropriate structures and to support CPPs in maximising the Bill’s impact.

62. However, the Bill Team stated in oral evidence, that whilst it agreed that “communities are not necessarily on a level playing field”, it did not believe that this was a matter for the Bill. Whilst the Bill provided a legal framework for such requests, support for capacity building in community bodies was provided through different avenues such as the Strengthening Communities Fund announced in April.<sup>33</sup>

63. South Lanarkshire Council also sought clarification of the definition of a community body, questioning whether such bodies were “restricted locally” or whether national organisations were also covered by the provisions. In the event that the latter was the case, it suggested it could be left open to “vast quantities of requests” leading to substantial costs which it was not resourced to deal with. It also expressed concerns that it could face further substantial costs if the outcome of the improvement process was that it had to “markedly change the way in which it sets its priorities and delivers services.”<sup>34</sup>

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<sup>30</sup> [NHS Lothian, written submission](#)

<sup>31</sup> [NHS Lothian, written submission](#)

<sup>32</sup> [East Lothian Council, written submission](#)

<sup>33</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49](#)

<sup>34</sup> [South Lanarkshire Council, written submission](#)

64. [The Explanatory Notes](#) state that—

“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.).

**65. The lead committee may wish to invite the Minister to respond to the concerns raised by South Lanarkshire Council regarding the definition of a community body.**

66. Fife Council also suggested that consideration might need to be given to levels of staffing needed to take on the organisation, assessment, and administration of additional requests from community groups. Whilst acknowledging that any investment in additional staffing might not be significant in terms of its overall budget, it noted that specific services such as Community Learning and Development were already under pressure as a result of having to respond to requests from local groups.<sup>35</sup>

67. The letter from the Minister dated 3 October provided examples showing that the overall costs for participation and engagement events could vary depending on the issues being looked at. It suggested that this was also likely to be the case with regard to participation requests and on this basis, estimated that costs per request could range between £1,000 and £7,500 “in most cases”. Therefore, should there be 100 participation requests across Scotland, the total cost could be expected to be between £100,000 and £750,000.<sup>36</sup>

#### **Part 4: Community Right to Buy Land**

68. The FM states that the Bill makes changes to community right to buy (CRTB) in order “to make the process easier and more flexible for communities while continuing to strike a fair balance between the rights of communities and landowners.” The FM further states that the Bill extends the right to buy to all of Scotland and removes the power of Ministers to designate “excluded land”.

69. Whilst the FM acknowledges that these changes could be expected to lead to more communities taking up the right to buy, it states that “it is not possible at this stage to accurately estimate the demand and how many new applications may be received.”

70. HIE agreed that it was difficult to quantify the likely increase in demand, but suggested that the extension of the right was “likely to generate significantly more CRTB applications” than anticipated with the attendant increase in costs to the Government. Whilst the FM does not make concrete predictions of the likely increase in CRTB applications, it provides examples on the basis of increases of five and ten

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<sup>35</sup> [Fife Council, written submission](#)

<sup>36</sup> [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014](#)

additional applications per year which HIE suggests is “on the conservative side”, particularly given the extension of the provisions to urban communities. This point was echoed by the SPF which questioned whether this assumption could “remain credible.”<sup>37</sup>

71. The Bill Team agreed that HIE could expect more work as a result of the Bill, but stated that it would have “a certain amount of flexibility” in how it assisted communities. When communities come to HIE, it suggested that —

“the process will not be about engagement and consultation through HIE’s mechanisms; it will be about what the communities want to do.”<sup>38</sup>

**72. The Committee acknowledges that bodies such as HIE will have some flexibility in how they deal with increased volumes of CRTB applications. However, the lead committee may wish to seek further clarity over what support might be put in place for such bodies in the event that demand exceeds expectations.**

73. Glasgow City Council stated that the FM “wrongly suggests that there are no financial implications for local authorities in relation to right to buy.” It expected costs to arise as a result of the council “putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale” where the request relates to its land or that of an Arms Length External Organisation. It also raised the issue of possible financial implications “in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy.”<sup>39</sup>

74. The SPF also suggested that the Bill might result in costs relating to events that did not happen or were delayed as a result of CRTB, for example where funding or investment was available for a limited time only and financial losses might be incurred as a result of delays resulting from CRTB applications.

75. Expanding on this point the SPF stated that its main concern was—

“that the enhanced scope of CRTB and by extension asset transfer may inhibit larger scale and complicated investment in development land in a manner that has not hitherto been an issue under the existing CRTB rights.”<sup>40</sup>

76. However, the Bill Team rejected this suggestion, explaining that similar concerns had been expressed during the passage of the Land Reform (Scotland) Bill, but they had not come to fruition. It further explained that in the event that community applications were made with the intention of inhibiting large-scale

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<sup>37</sup> [Highland and Islands Enterprise, written submission](#)

<sup>38</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 51](#)

<sup>39</sup> [Glasgow City Council, written submission](#)

<sup>40</sup> [Scottish Property Federation, written submission](#)

projects, it was unlikely that they would meet the public interest case set out in the Bill.

77. When asked whether it was correct that “the community land fund was established with a finger in the air to make a judgment, because nobody knew how many communities would apply or register interest in land” the Bill Team confirmed that it understood that to have been the case, although it did not know how the figure was arrived at.<sup>41</sup>

**78. The Committee invites the lead committee to seek clarification of how the community land fund’s budget was arrived at and to consider what parallels can be drawn between it and funding for CRTB in the context of the Bill.**

79. A further point raised by the SPF was the lack of a clear explanation of how the expansion of CRTB inter-relates with the Government’s guidance on what is known as “the Crichton Down rules” and the potential for costs in the event of a challenge under them. It explained that—

“This is where land has been compulsorily purchased by a public authority but is then surplus and subject to disposal by the public authority in question. In these circumstances it is government policy for the previous owner to have right of first refusal. We do not see any assessment of the costs of ensuring this guidance is followed or indeed, provision made for where challenges might be made by former owners to the (erroneous) sale of properties to CRTB.”<sup>42</sup>

**80. The lead committee may wish to seek clarification of how the expansion of CRTB might interact with “the Crichton Down Rules”.**

81. The SPF also questioned whether NDPBs such as Historic Environment Scotland would “no longer have the same level of protection under the Bill as had been previously envisaged when they were an Agency of Government”, suggesting that were this to be the case, there could be significant financial implications for its estate and for those of other public bodies.

82. A final point raised by the SPF related to what might happen in the event that a community body—

“successfully purchases via CRTB from, for example, a public sector authority but then two or three years later finds it is unable to continue to hold the property and needs to sell the asset on but is unable to. A public authority may well be obliged to resume ownership and we do not see that this has been factored into the financial implications of CRTB or asset transfer.”<sup>43</sup>

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<sup>41</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 56](#)

<sup>42</sup> [Scottish Property Federation, written submission](#)

<sup>43</sup> [Scottish Property Federation, written submission](#)

83. SportScotland expressed concerns in the context of its duties under funding rules stating—

“We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources, continuing to invest in line with national guidance, we are required to ensure we protect the additionality principle. This means lottery investment adds to, and does not replace, other funding sources, achieving additional impact to what otherwise would have been achieved. Furthermore our standard terms and conditions attached to awards state that lottery monies must be used for the purpose set out in the approved application and are non-transferable. Any proposed disposal of assets wholly or partially acquired, restored, conserved or improved through lottery (or Scottish Government funding) cannot be progressed without first giving us written notification and we are satisfied that full market value is being sought.”<sup>44</sup>

**84. The lead committee may wish to seek clarification of how rules relating to lottery funding might impact on CRTB.**

#### **Part 5: Asset Transfer Requests**

85. The FM states that the Bill seeks to increase the amount of asset transfers from public bodies to community bodies by allowing such bodies to identify for themselves what they wish to achieve and the assets that they wish to acquire. It notes that the service which supports asset transfers was involved in 38 asset transfers from 2011 to 2014 but states that it cannot accurately predict future demand post-implementation.

86. The FM also states that the Government and/or local authority may decide to transfer an asset at lower than its market value following a full cost/benefit analysis which would include predicted future savings.

87. In respect of the Scottish administration and public bodies, the FM states that “the costs of these provisions will depend on the arrangements put in place and any additional costs will be met from existing resources.”

88. The FM provides no estimate of the financial impact of these provisions on local authorities stating that they “were not able to provide monetary estimates for any costs and savings that may arise.” It explains that this was in part due to the difficulty of predicting the number and variety of requests as well as the “complexity in predicting savings associated with better service provision.”

89. As with participation requests, the Bill Team explained that there were too many variables in terms of potential demand to quantify the potential volumes of asset transfers—

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<sup>44</sup> [SportScotland written submission](#)

“As we go forward, we will see what the bill involves, but we cannot give the committee a definite figure for how much it might be used.”<sup>45</sup>

90. East Lothian Council estimated that it would require an additional full-time post costing around £40,000 per annum due to increased workloads arising from asset transfer requests. This additional work would include dealing with enquiries, the provision of detailed information, responding to and processing asset requests, preparing reports and valuations, responding to appeals, and providing plans and information. District Valuer valuations were also estimated to lead to fees of around £5,000 per annum.

91. East Lothian Council also estimated that its legal team could incur costs of between £400 and £1,200 per transaction and that it could spend around £500 each year in dealing with reviews (estimated at four per year).<sup>46</sup>

92. The letter from the Minister dated 3 October provided further information on the possible costs of dealing with asset transfer requests. In addition to the estimates provided by East Lothian Council, the letter also highlights figures from the Forestry Commission Scotland which indicate that it currently incurs costs of between £7,500 and £12,500 per asset transfer under its National Forest Land Scheme which enables communities to buy or lease Forestry Commission land.

93. The letter also provided a breakdown of the potential costs to community bodies undertaking an asset transfer. This states that “the estimate for community transfer bodies to obtain agreement to transfer is between £13,480 and £25,040.”<sup>47</sup>

94. With regard to overall costs, the Minister’s letter dated 24 October explained that “any estimate or range would be inherently flawed” as a result of uncertainties relating to the complexity of requests and demand over time.<sup>48</sup>

95. East Lothian Council also drew attention to councils’ duty to secure best value in their activities and to maximise the use of their assets. It pointed out that—

“It may not necessarily be in the best interests of the community as a whole to transfer a surplus building to a community group on request. The community as a whole may be better-served by attracting an economic use of such a building. In other words, there might be both economic and community wellbeing justification in seeking interest from the market to see if we could attract an economic use which would increase footfall and employment in the local area.”<sup>49</sup>

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<sup>45</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54](#)

<sup>46</sup> [East Lothian Council, written submission](#)

<sup>47</sup> [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014](#)

<sup>48</sup> [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

<sup>49</sup> [East Lothian Council, written submission](#)

96. Fife Council agreed that it was “difficult to estimate savings, especially if assets are being disposed at less than market value (as has been the case in transfers to community organisations).” With regard to potential costs it stated that—

“Local Councils may need to develop a cross Service team with a suitable skill mix to fully implement and manage any programme of transfer of assets. There is also an unknown potential cost to Councils as they will require to be reactive to communities’ aspirations. In addition to suitable community work expertise to engage with local organisations, legal, financial and property management skills may be required.”<sup>50</sup>

97. However, Fife Council did confirm that it did not expect these costs to be prohibitive in terms of implementing the Bill.

98. South Lanarkshire Council also noted that it could incur costs relating to asset transfers where it had to retain a property off market while the process was ongoing. These could include costs in relation to empty property rates, insurance, security, utility bills, repairs and maintenance. Noting that it could also lose income where the community body sought a reduction in price or rent (which it stated could be expected “in most cases”), it also drew attention to its responsibility to ensure that any such reduction was “clearly set against community benefits.”<sup>51</sup>

99. NHS Lothian echoed these concerns stating—

“The longer and more complex the disposal process becomes, the greater the cost to the public sector body. Non-domestic rates will be incurred, security costs will have to be paid and the potential for deterioration and vandalism increases.”<sup>52</sup>

100. In addition to these costs, NHS Lothian shared the views of East Lothian Council, suggesting that “the increased complexity and more onerous process may necessitate additional staff resources and a greater demand for consultancy services” as well as costs relating to legal fees and the valuation of assets.

101. In terms of potential savings, South Lanarkshire Council acknowledged that these were more difficult to identify as they would depend on the specific proposal. It stated that savings could be made if the alternative to asset transfer was demolition or if maintenance and operational costs were to be borne by the community organisation. However, it also pointed out that these savings could also be achieved through a sale or lease on the open market.<sup>53</sup>

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<sup>50</sup> [Fife Council, written submission](#)

<sup>51</sup> [South Lanarkshire Council, written submission](#)

<sup>52</sup> [NHS Lothian, written submission](#)

<sup>53</sup> [South Lanarkshire Council, written submission](#)

102. COSLA's submission stated—

“Very little information on the potential cost savings have been outlined, as again this will be demand driven and COSLA is concerned that these savings may have been overstated. COSLA would welcome clarity around this area of the Financial Memorandum.”<sup>54</sup>

**103. The Committee invites the lead committee to ask the Minister to respond to COSLA's request for further clarity in this area.**

104. NHS Lothian drew attention to anecdotal evidence that local authorities might regard the transfer of assets to community groups as a cost saving exercise and expressed concerns that such groups might not have “the funds nor the capacity to maintain these areas once a lease has been drawn up.”

105. It also expressed concerns that public bodies could incur losses as a result of the Bill—

“There may be potential costs to public service bodies as a result of land not necessarily being disposed of at true market value. Public bodies may bear a cost if they are not properly financially compensated for any asset transfers under Part 5 of the Bill. The Bill does not appear to require public bodies to be compensated for asset transfers.”<sup>55</sup>

## **Part 6 – Common Good Property**

106. The FM states that as of 31 March 2011, local authorities managed common good assets valued at £219 million. It explains that the Bill seeks to improve transparency around such assets and to increase community involvement in decisions regarding their identification, use and disposal.

107. To this end, the Bill will require local authorities to establish and maintain a register of common good assets and to invite community groups to comment on it in draft form.

108. Fife Council pointed out that the Bill does not amend the law of common good to allow local authorities to use certain categories of common good land for other purposes such as building new schools. It went on to suggest that this might have unintended financial consequences for local authorities as it would reduce their options for using their land. This, it suggested, could force councils to “acquire land from third parties at cost rather than making best use of existing resources.”<sup>56</sup>

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<sup>54</sup> [COSLA, written submission](#)

<sup>55</sup> [NHS Lothian, written submission](#)

<sup>56</sup> [Fife Council, written submission](#)

## Part 7 – Allotments

109. The Bill replaces existing legislation relating to allotments, “updating and clarifying” the requirements on local authorities.

110. Local authorities will be required to provide more allotments when certain trigger points are reached in relation to numbers on a waiting list.

111. The FM states that 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.” It also states that estimates provided by some local authorities indicate a cost ranging from £1,900 to £6,250 per plot and from £21,000 to £150,000 for a whole site. The FM states that demand is variable, with some local authorities facing substantial demand whilst others would need no more plots to meet this target.

112. North Ayrshire Council, however, stated that its response to a recent COSLA consultation had indicated an upper limit of £250,000 for a whole site.<sup>57</sup>

113. South Lanarkshire Council drew attention to the right of the Scottish Ministers to prescribe the size of allotments, which it stated would—

“clearly impact on the cost to the Council since a prescribed size will mean that the Council will have to consider this when acquiring land. Clearly, the larger an allotment is the greater the cost to the Council.”<sup>58</sup>

114. Whilst Glasgow City Council pointed out that—

“Specific costs are noted for the aspects of the Bill relating to allotments but this focuses on the administrative costs as opposed to the capital investment costs. The council believes that the capital investment costs would be significant.”<sup>59</sup>

115. COSLA also suggested that significant financial implications could arise for local authorities as a result of the development of new allotments, “in particular, where this includes the provision of roads for access and facilities such as toilets and access to water on site” and expressed concerns that the costs of site maintenance and utility bills had not been considered in the FM.<sup>60</sup>

116. In oral evidence, the Bill Team agreed that costs in relation to allotments would be “dependent on existing provision and demand” but explained that the FM’s figures

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<sup>57</sup> [North Ayrshire Council, written submission](#)

<sup>58</sup> [South Lanarkshire Council, written submission](#)

<sup>59</sup> [Glasgow City Council, written submission](#)

<sup>60</sup> [COSLA, written submission](#)

were based on information provided by “the 15 out of 32 local authorities that responded” to its consultation.<sup>61</sup>

117. The Minister’s letter dated 24 October confirmed that—

“the costs associated with the allotments provisions will depend on the amount of provision already in place compared with any unmet demand, as well as the local cost and availability of land.”<sup>62</sup>

118. However, it went on to state that “the figures provided by local authorities provide some examples but do not allow robust national estimates to be constructed.”

**119. The Committee invites the lead committee to seek clarification as to whether additional resources will be made available to any local authorities which incur significant additional costs as a result of the duty to provide additional allotments.**

## **Part 8 – Non-Domestic Rates**

120. The FM states that, in effect, this provision allows local authorities “to create localised relief schemes to respond to local needs and demands.” Any such discretionary reliefs awarded by a local authority must be funded from within that authority’s existing resources and not at the expense of the [Government’s central NDRI] pool.”

121. The Bill does not give local authorities equivalent powers to levy any additional rates.

122. Fife Council stated that “in effect it proposes the establishment of localised relief schemes which could be used to help incentivise development and investment in areas deemed appropriate by the local authority.”<sup>63</sup>

123. However, Fife Council also noted that whilst this could create opportunity, it could also lead to additional costs in terms of administration costs and the loss of income arising from the reliefs themselves. It further pointed out that the Bill explicitly prevented local authorities from raising NDR in other areas to compensate for any loss of income.

124. East Lothian Council stated that any reliefs would have to be funded by savings elsewhere and would ultimately be borne by council tax payers. It further suggested that the Bill could be expected to lead to a marked increase in applications for NDR relief and related disputes and in their complexity which would inevitably impact on its workload. This additional work, it suggested, could lead to a reduction in the

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<sup>61</sup> [Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48](#)

<sup>62</sup> [Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014](#)

<sup>63</sup> [Fife Council, written submission](#)

collection of NDR as the absorbing of the additional workload could leave its Business Rates Team with fewer resources to target poor payers.

125. East Lothian Council did acknowledge that longer-term financial benefits could result from the targeted use of reliefs to stimulate economic growth in certain areas, but stated that in the short-term, it would “be costly in a time of monetary constraint as we would be funding any reduction.”<sup>64</sup>

126. North Lanarkshire Council also suggested that “the new localised relief scheme has the potential to benefit larger/Council Tax rich local authorities at the expense of other local authorities.”<sup>65</sup>

127. The SPF raised the issue of whether local authorities might seek to spread the costs of NDR relief among local landlords and expressed the hope that central government would provide some financial support for the policy.<sup>66</sup>

## CONCLUSION

**128. The lead committee is invited to consider this report as part of its scrutiny of the Community Empowerment (Scotland) Bill’s FM.**

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<sup>64</sup> [East Lothian Council, written submission](#)

<sup>65</sup> [North Lanarkshire Council, written submission](#)

<sup>66</sup> [Scottish Property Federation, written submission](#)