COMMENTS ON PROCEDURES PROPOSED UNDER NEW PART 3A OF THE LAND REFORM (SCOTLAND) ACT 2003 INTRODUCED BY SECTION 48 OF THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

1. This note comments on a couple of specific aspects of the procedures introduced by Section 48 of the Community Empowerment (Scotland) Act. These relate to mapping land and holding a community ballot, apparently based on procedures in Part 3 of the Land Reform (Scotland) Act 2003 and its associated regulations. I have been closely involved as a Director of the Pairc Trust with applications made under Part 3 of the Land Reform (Scotland) Act 2003. Pairc Trust is the only crofting community body in Scotland which has used these procedures to the stage of applications being approved by Scottish Government, and our experience may therefore be of relevance when considering the proposal to insert a new Part (apparently based on the procedures in the existing Part 3) to enable purchase by community bodies of abandoned and neglected land introduced by Section 48 of the Community Empowerment (Scotland) Bill.

2. I also understand that the Scottish Government now intends to use the Community Empowerment (Scotland) Bill to amend Part 3 of the Land Reform (Scotland) Act 2003 in relation to the crofting community right to buy. My comments below are therefore also relevant to the reform and simplification of this latter piece of legislation.

3. In general, my experience must follow is that these are (i) sometimes there is in my view a need wherever possible to simplify procedures so that genuine and strong applications cannot be thwarted by legal action on technical issues contrary to the wishes of Parliament when they passed the legislation.

4. I note that the Scottish Government, through other provisions introduced by Part 4 of the Bill, is proposing simplifications to Part 2 of the Land Reform (Scotland) Act 2003. This is welcome, and I would suggest that the same approach should be taken in relation to the Part 3 procedures. This note is confined to ways of simplifying the requirements for mapping and the holding of a community ballot. I understand that others are commenting on ways of simplifying the definition of a community body, the legal status of the type of community body permitted, and that a Part 2 community body should be able to become recognised as a Part 3A community body.

5. requiring simplification under Part 3 of the Land Reform (Scotland) Act should say that I completely 6. there seems no logical or functional rationale for being required to provide the following details:

* a map and written description showing not only the boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches, or other boundaries. This goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information. It is particularly onerous when the area to be purchased extends to several thousand hectares. Yet similar detailed requirements are proposed in Section 48 of the Bill (Clause 97G (6)(d) and (f) for the new proposed Part 3A).

* further, if the same regulations as are applied to the existing Part 3 of the Land Reform (Scotland) Act 2003 were to be applied to the new Part 3A, this would require a list of all postcodes and O.S. 1
Km. grid squares included in the land or lease area to be purchased (Question 4(c)). Again there seems no reason for this if the boundary is properly defined on a map. If the area concerned extends to several thousand hectares, the list simply opens up scope for a technical challenge if particular postcodes or grid squares are inadvertently omitted.

7. Finally, the regulations under Part 3 require crofting community body to supply a This runs the risk of a technical challenge if any of the information on the detailed list, however trivial, is inaccurate. The proposed new Clause 97J(3) and (4) to be included in a new Part 3A do not require a detailed list, but if similar regulations to those which apply under Part 3 were to be drawn up under the proposed new Part 3A then a similar risk would apply. in my view in the community a sa it contains any 8. A criterion of proportionality should be applied to all such provisions so that an application which meets the essential purposes of the Act is not at risk of refusal or legal challenge on minor technical details. For example, an error in one listing of one postcode or grid square should not invalidate an application if the boundary of the land or lease to be acquired is clear.

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August 2014