Submission of Written Evidence – Community Empowerment (Scotland)
Bill submitted by Friends of Midmar Inn Community Company

A) Summary of FOMICC Experience with CRTB

The historic Midmar Inn, aka The Cottage Bar and a one time Drovers Inn, had been a busy and successful meeting place for over 200 years, it has always played a central role in the community life of Midmar and the surrounding area. In 2004 it was sold and under the new ownership, rapidly declined because of poor management and lack of investment, in September 2007 it was closed.

In late 2007 a group of local residents were interested in buying the business and property from the owners and these approaches were rejected, therefore in January 2008 this group formed the Friends of Midmar Inn Community Company (FOMICC) (SC 337914) and commenced the process of applying for a Community Right to Buy (CRTB), this was originally awarded in 4th July 2008.

In parallel with the CRTB process the owners applied for Change of Use of the building (part public house and part private residence) to entirely residential and also sought planning permission for an extension to the property. This was planning application G/APP/2008/0932, the Garioch Area Committee refused the application. The owners then appealed the decision (ref P/PPA/110/810) and as per the judgement in July 2009, this was not successful, primarily because the owners had made no attempt to market the business before they had closed it down.

On various occasions since the closure of the Midmar Inn, FOMICC has attempted to negotiate its purchase however the general attitude of the owners has been that :-

i) By not offering the property for sale they can avoid engaging with the CRTB process

ii) they have not allowed any independent valuations or surveys to be undertaken, choosing instead to initially to set an indicative sale price equivalent to the property value had it already been converted to a private residence and then more recently at a level below that value but still much more than it is probably worth.

In undertaking this project, FOMICC intention is to procure the property at a fair value on behalf of the community and re-establish the business; we have not therefore been able to conclude any deal with the owner.

The CRTB award lasts five years, therefore in July 2013, with more than 75% support from our community (as indicated by validated ballot) FOMICC re-applied for the CRTB which was awarded again in August 2014.

As witnessed by one of the many communications we have had from the owners over the past six years, in a similar vein, following the Ministers decision the owners wrote:- “This screwed up decision by the Scottish Ministers to grant you lot another 5 years make no difference to me at all, the Midmar Inn will fall down before I sell it to the supposed Friends of the Midmar Inn.”

To summarise the Current Situation at August 2014:-

• Under CRTB, the FOMICC has the Right to Buy the Inn, but the Owners will not engage with this process
• FOMICC has the money to buy the property at a fair valuation as a Public House
• The planning system and associated appeal have both refused a Change of Use until the option to reopen as a Public House has been fully tested in the open market.
• FoMICC has a business plan in place (that has been validated by experts) showing that with the right investment and under professional management the business will be a success

• This historic building has been boarded for more than 5 years and continues to decay when it should be a source of economic activity and benefit to our community.

B) Response to Committee Questions

In this section we have summarised our views regarding questions highlighted by the Scottish Parliament press release “Putting the ‘power’ in community empowerment?” (link http://www.scottish.parliament.uk/newsandmediacentre/78922.aspx) announcing the Community Empowerment Bill consultation process on 26 June 2014.

Our experience is particular to the Community Right To Buy (CRTB) process which was originally defined by Part 2 of the Land Reform (Scotland) Act 2003 and may now modified refined by Part 4 of the proposed Community Empowerment Bill. We have therefore limited the scope of our evidence as to how this new Community Empowerment Bill effects the CRTB legislation.

B.1 To what extent does the bill empower communities?

a) General

It is FOMICC opinion that the original act has been of enormous benefit to communities all around Scotland. Where existing landowners have demonstrated by their actions (or lack of), over a long period of time, that they have no interest in embracing the social and economic responsibility that comes with ownership of their land, it is right that a mechanism should exist that allows others to take action.

The CRTB process, as defined in the original act, sets out a fair mechanism by which communities, if they are so minded, can take over the operation of land (with associated buildings and businesses) and run it for the benefit of all, including the original owner if they are a local resident.

It is evident from many projects around Scotland that where there is a willing seller and an organised community body that the CRTB process has been a force for good over the last 10+ years. Even in cases where the seller is not willing the implementation of a CRTB has helped to facilitate the sale process, because:-

• The community companies that are established are “not for profit” (any profits being returned to the community), this is a powerful incentive for everyone to want to contribute and thereby create social pressure on the owner to either improve or sell-up.

• The mechanism establishes a framework that allows sufficient time for monies to be raised to procure at a value that has been established by an independent valuation

• Other community improvement bodies and local government can engage because the community companies are a recognised legal entity

We would cite the case of the Crook Inn (Tweedsmuir near Peebles) as an example of all of the above, by virtue of establishing the Community Company this created pressure on the owner who initially set an unrealistic value.
The Crook Inn had been made a Listed Building in 2002 and consequently the local Council were able to approach the owner in regard to his responsibilities to maintain the building. As a result of this approach the owner sold the Crook Inn to the Community Company within 3 weeks.

Unfortunately the Midmar Inn is not a Listed Building, nor is it in a Conservation Area, which means that the Local Council is unable to enforce maintenance of the building.

b) Unwilling Owners (Seller)

As highlighted in the Policy Memorandum for the Community Empowerment Bill, clauses 57 and 65, the proposed Part 3A to be inserted into the original act to provide a framework for community bodies to purchase abandoned or neglected land without a willing seller, this, we hope, will solve the deadlock situation that our project has been in for six years.

The owners of the Midmar Inn (Aberdeenshire) have steadfastly refused to engage with the CRTB process presumably believing that if they wait long enough then the community will lose interest in the project. As evidenced by the survey we undertook in 2013 to re-establish the CRTB the community is still interested, more than 75% of those polled were in support of the FOMICC ambition to procure the land and re-establish the Midmar Inn business. The dilapidated state of the building and site is a constant topic of discussion both in Midmar and the wider Aberdeenshire community.

Unlike the Crook Inn (Tweedsmuir), the Midmar Inn building is not listed, either in part or whole, and hence there is no mechanism under current legislation for FOMICC or government to encourage the owners to engage, nor is it in a conservation area. By this means the Midmar Inn owners, over the last 6 years, have successfully frustrated the intention of the CRTB awarded by the Scottish Ministers in 2008 and 2013 to FOMICC and denied our community the opportunity to improve the economic and social welfare of our area.

FOMICC has no doubt that if the Part 3A if inserted into the original act and is made applicable to all land will be hugely empowering for all communities since it should ensure that owners will engage. It is important that the process is fair to both parties and FOMICC believes that the CRTB procedure ensures this through confirmation ballots, independent valuation and time limiting the period to raise the funds.

c) Definitions of Registerable and Excluded Land

We do not believe these changes will affect our situation as the Midmar Inn is already registered land and is hence not excluded land. What is proposed would seem sensible; the effect of the bill should be applicable throughout Scotland to ensure all communities have equal opportunity.

d) Definition of Community Area

The existing regulation about post code areas has caused the FoMICC a number of problems. The changes to section 34(5) of the original act are interesting but we are unclear as to what effect they may have on us. We would hope that rather than having to use Post Code to define the community area the Community Company could apply to use a combination of Geography and Post Code. As indicated in the drafted changes this would become a “prescribed type of area”.

Because we have only a small population within the Post Code area around the Inn it would be beneficial for FOMICC to continue to use the Post Code to define the voting population for the
Local Government and Regeneration Committee

Attachment A

Comments on Community Empowerment Bill

purpose of ballot but also allow members of the company (there needs to be 20 in number) from the wider geographical community, for example within an eight mile radius of the Inn.

e) Changes to Timelines and Procedures

FOMICC notes the various changes proposed to time limits and procedures, notably:-

a) The Confirmation Ballot to be performed by an independent “Balloteer” appointed by ministers.

b) That Ministers may waive the requirement for a confirmation ballot if the application ballot had a sufficient majority.

c) Extension of the time to raise funds from six to eight months.

d) Making the valuation process more robust.

e) Requiring minutes of company meetings to be shared with those requesting to see them.

Point (a), as drafted, provided the Community Company does not bear the cost of using an independent “Balloteer” to run the confirmation ballot, therefore FOMICC supports this initiative because it will improve the credibility of the result and ensure impartiality.

Point (d), we welcome the changes to strengthen the valuation procedure, in FOMICC experience this has been one of the major reasons that the owners of the Midmar Inn have refused to engage with the CRTB process. They have always stated their belief that the independent valuation would not be fair and they had no right of reply. FOMICC throughout have steadfastly maintained the position that we will pay a fair price, considering what was originally paid by the owners in 2004 and the state of the property and business as it is today.

B.2 Benefits and disadvantages for public sector organisations?

FOMICC cannot offer any evidence in this regard except that it may make it clearer for such organisations what their responsibilities are.

B.3 Do communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

In our opinion, where the cause is important enough, communities will find the skills required to take advantage of the provisions in the Bill. To mobilise these skills does however require a financial input, organisational and leadership skills and a significant voluntary contribution by members. This has been FOMICC experience. The original act, and the improvements proposed by the Empowerment Act “open the door” and it must be up to the community to grasp these opportunities to move forwards.

We would however qualify this support by stressing that it is important that the legislation must not impose an onerous requirement on the community for financial outlay at the inception of a project which would be a wasteful and unnecessary expenditure of a scarce resource. We believe that by the government funding ballots and independent valuations etcetera that are required by the process, this goes a long way towards satisfying this requirement.

We would also recommend that the bill offers to support the community with legal costs if owners take a challenge to the courts over rulings that have been made, i.e. the independent valuation.
C) Concerns and Other Information Regarding the Bill

C.1 Drafting of section Part 3A regarding Abandoned or Neglected Land

Having read all appropriate documents, we are confused as to whether or not the right to buy Abandoned or Neglected land, with an unwilling seller applies equally within the proposed amended Land Reform Act to land registered under Part 2, such as the Midmar Inn and to crofts registered under Part 3A. To comply with the principals as evidenced by items 57 and 65 of the Policy Memorandum, we strongly believe that it should.

We do not understand why Part 3A has been drafted separately to the original Part 2 and modifications to this to be applied by the proposed Empowerment Bill. The wording of the new Part 3A is very similar to Part 2, with the apparent exceptions that a community company constituted under this Part 3A can :-

a) Have less than 20 Members, if Ministers think it in the public interest to allow this.

b) Procure Abandoned or Neglected Land from an unwilling seller

We note that Part 3 of the original act was concerned with crofts and therefore query if this new Part 3A is intended for application only to crofting land?

It is our concern that because FOMICC is a Community Company constituted under Part 2 of the original act, if the proposed drafting of the new bill using this Part 3A will preclude us from using this legislation to deal with the scenario of an “unwilling seller” who has totally neglected the property for the past 6 years that we describe in our evidence B.1(b). If this is the case, we regard this as a major deficiency of the Empowerment Bill and in direct contravention of the ambition expressed in items 57 and 65 of the Policy Memorandum.

C.2 Existing Local Authority Powers to bring property back into use.

The Policy Memorandum (on its Page 6, 5th Bullet of Section 25) states that :-

"There are already a range of powers available to local authorities to bring long term empty property back into use, and it was not clear that new legislation would be more effective than the current powers. The Government is continuing the work of the Empty Homes Partnership and monitoring the use of other powers, such as compulsory purchase for immediate re-sale and the Local Government Finance (Unoccupied Properties etcetera) (Scotland) Act 2012."

It has not been FOMICC experience that local government has been in a position to help.

Though our local councillors have been supportive, in 2013 we approached our local authorities about the state of dilapidation of the Midmar Inn and to paraphrase received the negative response that, planning were “concentrating on listed buildings and buildings in a conservation areas”. The implication being that the officials in our local planning department had different priorities. Conversely of course the Crook Inn in Tweedsmuir did get indirect assistance from their local councillor pursued maintenance requirements on the Crook Inn.

FOMICC view is that the proposed bill will make the responsibilities uniform throughout the country and this must therefore be a good thing.
C.3 Penalties for non-compliance with CRTB Process

Not being professional legislators it is not clear to us what the penalty is for non-compliance with the CRTB process.

For our own part we understand that if we fail to meet the criteria specified by the original Act and proposed Empowerment Bill then the CRTB will be withdrawn by the Scottish Ministers from FOMICC.

We do not see anything in the existing or proposed legislation that defines what penalties may be imposed on the owner if they do not comply with the process.