Dear Sirs

Community Empowerment (Scotland) Bill
Submission on Bill Provisions

I thank you for the opportunity to provide a Submission regarding this Bill and my comments are as follows:-

Section 97C, Sub-section (2) (Explanatory Note 121)

It is noted that Ministers may make regulations setting out what factors they must have regard to when deciding where the land is wholly or mainly neglected or abandoned. It is very important that the criteria set out to define ‘wholly or mainly neglected or abandoned’ land are very clear, otherwise there may well be a large number of appeals to the Sheriff under the appeal provisions in 97V.

Section 97J, Sub-section (1) (Explanatory Note 164)

It is noted that, unlike the provisions for rural subjects in Part 3 of the 2003 Act, the community body in this case will not know the valuation at the time at which the ballot takes place. Under the current 2003 Act, community bodies, when the ballot takes place, are well aware of the valuation which has taken place and know exactly what they are voting for. This could cause difficulties if the community body vote to approve a Right to Buy, and the valuation is significantly higher than they anticipate. This difficulty would be averted if, as in Part 3, the valuation took place prior to the ballot.

Section 97J, Sub-section (6) (Explanatory Note 168)

It is noted that it will be the community body which is responsible for the expense of conducting the ballot. This again is different from the procedure in Part 3 of the 2003 Act, where it is the Scottish Government which is responsible for that cost. This could also cause issues for more disadvantaged communities which, without adequate financial support, might find it difficult to source the money to conduct the ballot.
Section 97S, Sub-section (8) (Explanatory Note 213)

This requires the valuer to ask both the owner and community body for their views in writing on the value of the land. However, unlike the new amendments to Section 60 of the 2003 Act, where both the owner and community body have rights to make comments on the other party’s representations, there appears to be no such right in this case. Those changes to Section 60 were, presumably, made in order to ensure that both parties were treated fairly by giving each the opportunity to comment on issues raised in the other’s representations, and draw attention to anything inaccurate or potentially misleading, and thus to ensure that the valuer had received accurate representations. It also brought the procedure into line with that outlined in the RICS Guidance Note for Independent Experts and Arbitrators, and I suggest that it would be useful to introduce such additional representations to the procedure in this section also.

Section 97S, Sub-sections (9) and (10) (Explanatory Notes 214 and 215)

It is not quite clear to me what happens if the valuer disagrees with the valuation which has been agreed under Sub-section (9) between the community body and the owner of the land. My assumption is that the valuer must report his or her own assessed value, whilst noting the figure agreed by the two parties. This will be of relevance if, for example, the figure agreed by the parties is higher than the valuer’s assessed valuation, and public money is being used to fund the acquisition.

Section 52, Asset Transfer Requests (Explanatory Notes 256-257)

It is noted that the community transfer body, in making an asset transfer request, must specify, *inter alia*, the transfer price or the amount of rent, whichever is appropriate. This could cause difficulties if the property concerned is one where the community body would prefer to obtain professional valuation advice, as unlike the circumstances in either Part 3 or Part 3A, there are no provisions for payment for such costs to be met by the Scottish Government. It should be noted that although the Council’s Asset Register may contain a valuation of the property, for many properties this would be calculated on a depreciated replacement cost basis, and that figure would be inappropriate as a basis for a transfer price or rent. It might therefore be helpful if payment of necessary professional fees were possible.

Section 58, Appeals (Explanatory Note 267-269)

It is possible that the reason for the disagreement and the Appeal is because the relevant authority has a substantially different idea of value from the community body. In such a case, it would be helpful if there were provisions allowing the Scottish Ministers to appoint a valuer acting as an Expert, as happens elsewhere in the Act, to provide a valuation.

Thank you for the opportunity of making this submission.