Pinsent Masons LLP are a multi-national law firm with three offices in Scotland advising national and international clients with property interests in Scotland. We have extensive experience of acting for landowners, developers, investors and funders. We advise both the public and private sectors. We have restricted our comments to the extension of the community right to buy land and the introduction of asset transfer requests as these are the areas which are of most concern to our clients. Those concerns centre around ensuring that the rights of landowners, and the interests of other affected parties such as developers and funders, are given due balance.

We responded to the consultation on the draft Community Empowerment (Scotland) Bill which closed on 24 January 2014.

**Part 4 of the draft bill (Community right to buy land):**

**Section 44 Expenses of valuation of land**

Where a land owner gives notice (under section 54 (5) of the Land Reform (Scotland) Act 2003 ("2003 Act")) of the owner's decision not to proceed further with the proposed transfer of the land it is proposed (new section 60 (A) (2) of the 2003 Act) that the Ministers may require the owner of the land to pay any expense incurred by the Ministers in connection with the valuation of the land. We consider that further clarification of the criteria which would form the basis for the Minister's decision on expenses should be given. A land owner must remain free to deal with his or her land as he or she sees fit and having the threat of recovery of expenses against the land owner could adversely affect the land owner.

**Section 48 Abandoned and neglected land**

We remain concerned as to how land will be identified as being abandoned or neglected as land management can take so many forms. A land owner may be pursuing long term development proposals in good faith which are not evident to the community. Section 97C (1) and (2) leaves it to the Scottish Ministers to flesh out its meaning but we believe more statutory guidance is required as this is a very important concept, leading as it could to the transfer of land to a third party community group under compulsion.

In relation to the proposed new section 97G (10) the information to be provided by the owner should include information about the effect on the owner's funder. Account also needs to be taken of the existence of any leases or other contractual commitments which bind the owner in relation to the land. We do not consider that section 97G (10)(d) is sufficiently clear in that regard. This is particularly important as such contracts can be rendered void by section 57 (5).

Where land is acquired by, or under threat of, compulsory purchase a non-statutory arrangement known as the Crichel Down Rules provides that surplus land should be offered back to former owners and their successors. The procedure for the resale of the land is set out in Planning Circular 5- 2011 in the Scottish Government Planning Series (Disposal of surplus government land- the Crichel Down Rules).

We consider that the equivalent to Crichel Down Rules should apply where land acquired under the amended 2003 Act is not used for the purpose for which it was acquired. The former owner or their successors should be entitled to first refusal if the land is no longer used by the community for the intended purpose.

Under new section 97S (assessment of value of land etc) does the market value take account of the owner's special interest if it is the owner of other land nearby?
Part 5 of the draft bill (Asset transfer requests):

Section 55 Asset transfer requests: decisions

Sub-paragraph (h) refers to any obligations “imposed” on the relevant authority, by or under any enactment or otherwise, that may prevent, restrict or otherwise affect its ability to agree to the request. This should include contractual obligations which the relevant authority has entered into; but contracts are not "imposed" on the relevant authority, rather contracts are freely entered into and obligations are accepted by the relevant authority. The drafting should be amended to reflect this. Under section 55 (5) it should be made clear that a pre-existing contractual obligation by the relevant authority affecting the asset is a "reasonable ground" for refusing an asset transfer request.

There will need to be some sort of publicly available register of asset transfer requests to and decisions by relevant authorities so that third parties contracting with the relevant authorities are able to ensure that they do not unwittingly enter into a contract which will become void under section 57 (5). Also in relation to section 57(5) contracts should only become void "to that extent".

Section 56 Agreement to asset transfer request

The transfer of the asset to the community transfer body should contain a restriction on the use of the asset for the agreed public use. If the community body later use the land for a different (and perhaps more lucrative) purpose, this hardly serves the public good in that the assessment made at the time of the transfer request is just being disregarded.

Section 58 and 59 Appeal and Review by local authority

The draft legislation provides appeal procedures in section 58 which apply unless the relevant authority is the Scottish Ministers or a local authority. Section 59 provides for a review procedure if the relevant authority is a local authority. Why does this review procedure not also apply if the Scottish Ministers are the relevant authority?

We would be pleased to expand upon any of our points should that be helpful to the committee.

Pinsent Masons LLP

4 September 2014