



Community Empowerment (Scotland) Bill

Scottish Government Response Stage 1 Report

February 2015

INTRODUCTION

I would like to thank the Local Government and Regeneration Committee, Finance Committee and Delegated Powers and Law Reform Committee for their consideration of this legislation at Stage 1, and the Rural Affairs, Climate Change and Environment Committee for their scrutiny of Part 4 of the Bill. I welcome the report and I thank everyone who took the time to give evidence to shape the Bill and the Committees' recommendations.

This Government is committed to creating a fairer and more prosperous country, and we believe we can only do that when everyone feels they can contribute and have their voices heard. It is clear that people want to be involved when they know they can make a difference. The Bill will place new duties on a range of public authorities and create new rights for community bodies, helping them to take control of land and buildings and to participate and have their voices heard in the planning and delivery of public services. It will ensure that all public services are shaped by a focus on outcomes, with local priorities to the fore. It will also encourage and support the shift in mindset we want to see, so that community empowerment and participation becomes everyday practice in all public services.

Responses to all the recommendations and key points made in the Stage 1 Report are set out below, using the paragraph numbering from your report. Part 4 of the Bill, Annexe A of your report, is dealt with separately.

I welcomed the debate on the general principles of the Bill and both I and the Minister for the Environment, Climate Change and Land Reform look forward to continuing to work with the Committees and stakeholders on the detail as the Bill progresses through its further Parliamentary stages.

Marco Biagi MSP

Minister for Local Government and Community Empowerment

RESPONSE TO STAGE 1 REPORT KEY POINTS

Introduction

34. We were pleased to hear the Minister go some way to meeting these concerns [about ineffective forms of consultation] when he indicated he will lodge an amendment at stage 2 to strengthen accountability in community planning partnerships by making reference to the national standards of engagement. We will expect that amendment to apply widely and cover all instances of engagement under the Bill.

The Bill changes the purpose of community planning from a process for planning local public services to planning that is carried out to improve local outcomes. In doing so the Bill strengthens community participation so it is about more than just consultation, and Community Planning Partnerships must secure and enable that participation (including by contributing resources). We have considered the evidence received and the discussions within the Committee and we will amend the Bill to further increase the accountability of CPPs to their communities.

The Bill requires public authorities to have regard to guidance issued by the Scottish Ministers in carrying out their functions in relation to community planning, participation requests and common good. The relevant guidance will include the National Standards for Community Engagement, which following the passage of the Bill will be refreshed, updated and promoted to local authorities and public bodies for use in all their engagement activities.

47 The Minister stated “...there will be a requirement in legislation to produce the information that is needed to understand the nature of the assets and buildings [subject to an asset transfer request].” We consider the same position should apply to all parts of the Bill and to all the public bodies subject to provisions. We recommend the Bill, or regulations or guidance should set out requirements in this regard on such bodies to provide up-front support with the necessary expertise to support applicants

These requirements will be set out in different ways for different parts of the Bill. For example:

- In relation to community planning, section 4(5) requires the community planning partnership to “make all reasonable efforts to secure the participation” of community bodies and to “take such steps as are reasonable to enable the community bodies to participate in community planning”, and section 9(3) requires each community planning partner to “contribute such funds, staff and other resources as the community planning partnership considers appropriate...for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning”. Guidance, including the National Standards for Community Engagement, will provide more detail on how this should be done.

- In relation to participation requests and asset transfer requests, the Scottish Ministers may make regulations about the procedure to be followed by public service authorities and relevant authorities in relation to requests, in addition to the power in section 54(3) to make regulations about information to be provided about land in respect of which a community transfer body proposes to make an asset transfer request. Further to these regulations, guidance will provide advice on promoting the provisions of the Bill and supporting bodies which may want to make a request.

Support will not only come from the body to which a request may be made. The Scottish Government and its agencies provide and fund a range of support for community bodies which will, in future, include support to take advantage of the provisions of the Bill. This includes Highlands and Islands Enterprise's Strengthening Communities Work, the Community Ownership Support Service which works with both community bodies and local authorities to promote asset transfer, and the work of the Coalfields Regeneration Trust, amongst others. A Third Sector Interface is funded by the Scottish Government in each local authority area to support and develop a strong third sector and build their relationship with community planning.

48. We look forward to the views of the government in relation to the funding of capacity building recognising the long term aim must be to build capacity directly into communities. We expect the Government to state the current amount spent on community capacity building and the extent to which that will increase as the Bill is implemented.

265. The importance of anchor organisations and the third sector in delivering support to communities and in bridging knowledge and skill gaps is widely accepted. Accordingly we would like the Scottish Government to state its approach to building this capacity and how it is to be funded, thereby allowing Parts 3 and 5 to be accessible to all.

As part of the Public Service Reform agenda, all public bodies and local authorities are expected to engage communities in the design and delivery of services, and to consider the need for capacity building and support to allow all communities to participate in those processes.

The Scottish Government has issued the Strategic Guidance on Community Learning and Development (CLD), which includes capacity building, and the CLD Regulations, requiring education authorities to plan CLD on the basis of identifying those communities which are most likely to benefit from CLD and assessing their needs and barriers to access. Funding for this activity and for local community-led regeneration is provided by central government to local authorities within the general local government settlement, and is not ring-fenced.

The Scottish Government's Empowering Communities Fund, totalling £19.4m in 2015-16, funds a range of programmes to support community bodies and the development of participatory approaches. This includes the Strengthening Communities Programme which is directly intended to build capacity in local community organisations, particularly in areas suffering disadvantage and inequality.

Capacity in communities arises from many sources. When people are engaged and supported to participate in one area of their lives, they develop greater confidence and skills to seek participation in other areas. This could be through any activity: community gardening, involvement in community-controlled housing or a tenants association, patient-led healthcare initiatives, sport and exercise, environmental projects, are just a few examples.

The Scottish Government also recognises the critical role the Third Sector plays in addressing issues of inequality and the needs of disadvantaged communities, and helping to build the capacity and confidence of people and communities to take control of decisions about what goes on in their local areas. It is at the heart of transforming lives and public service reform in Scotland, working directly with individuals and communities to co-produce solutions and approaches that support resilience and wellbeing.

The Scottish Government invests significantly in the third sector as a key social partner, with third sector funding of £24.5m maintained in the 2015/16 budget. We are working closely with the sector to consider what approach might be taken in the period ahead to continue to secure a buoyant and sustainable third sector.

In 2015-16 to maximise the contribution of the third sector, we will:

- recognise the role of the third sector as a social and economic partner, continuing to invest in the national infrastructure, and in local third sector interfaces to support the third sector's local role and as key partners in community planning;
- invest £2.5 million over 2014-15 and 2015-16, to build the capacity and resilience of communities and local third sector organisations, particularly helping them to respond to the worst effects of welfare reform; and
- aim to maximise the impact of the third sector in public service reform and prevention, growing community capacity, empowerment and initiative, tackling poverty and social exclusion, and developing enterprising and innovative solutions to the challenges facing communities.

Capacity building is therefore spread across many budgets and organisations and it is not possible to define a single figure for the amount spent on it, particularly as increasing capacity may be only one element of wider activities.

49. We agree with the submission of South Lanarkshire Council there should be a specific duty on CPP partners to reduce inequality and focus on early intervention and prevention. We look forward to the Scottish Government stating how this will be taken forward.

The Scottish Government and the National Community Planning Group agree that community planning should include a particular focus on prevention and reducing inequalities. This is made clear in a letter which the Chair of the NCPG issued to

CPP Chairs in July 2014¹, which highlighted a set of key principles on how CPPs can continue to maximise their impact. These include that the themes of prevention, joint resourcing and community engagement and co-production are intrinsically interconnected; that CPPs should focus their collective energy on where their efforts can add most value for their communities, with particular emphasis on reducing inequalities; and that, since multiple negative outcomes tend to befall the same communities with inequalities most stark when disaggregated to small neighbourhood level, there is real value in targeting and customising services to particular communities and in building community capacity.

In line with this, we intend to introduce an amendment to the Bill which ensures that the statutory purpose of community planning should be to reduce inequalities of outcome among communities in the area, as well as to improve local outcomes. How CPPs fulfil these expectations will be for them to decide, based on their participation with community bodies and their understanding of local needs and circumstances. Statutory guidance can set out approaches which CPPs and their partners should deploy or consider, with preventative approaches likely to be prominent in such guidance. While preventative approaches are not ends in themselves, we would expect CPPs to pursue these vigorously as a matter of policy.

67. We therefore draw to Parliament's attention when considering the financial resolution on this Bill the concerns of the Finance Committee that, despite the requirements of Standing Orders, best estimates have not been provided.

Annexe A 98. The Committee recommends that the Scottish Government monitor the cost implications of the Part 4 provisions closely over the coming years, in terms of both the direct cost to communities and landowners and the indirect costs to public bodies and keep the funding requirements under review.

These issues were highlighted during the Stage 1 debate on 3 February 2015. The Government's position remains the same that best estimates have been provided of the administrative, compliance and other costs to which the provisions of the Bill would give rise. We also provided the best estimate of the timescales over which such costs would arise and we have given a very clear indication of the margins of uncertainty in our estimates. The Parliament voted in favour of the motion in respect of the Financial Resolution following the Stage 1 debate.

The Scottish Government will monitor and review the cost implications of the Bill in respect of the cost implications for public authorities, communities and landowners.

79. For our part we found it necessary to seek substantial additional detail to supplement that supplied in the Policy Memorandum. We observe the legislative requirements of Parliament are made for a purpose, not only to inform members but also crucially, to allow the wider public to meaningfully contribute. We have also commented in this regard to the delay in publishing

¹ <http://www.scotland.gov.uk/Resource/0045/00457528.docx>

the EQIA until a point in time when the majority of our evidence have been taken.

Annexe A 76. The Committee considers that Policy Memorandum should strike a balance between presenting the high level and broad policy and providing sufficiently detailed information to clearly explain the provisions of the Bill and enable effective scrutiny. On balance the Committee believes that the significance and complexity of the provisions within Part 4 of the Bill would have merited further explanation and clarification within the Policy Memorandum.

Annex A 87. The Committee welcomes the commitment of the Cabinet Secretary to reflect on the points made in relation to human rights issues, both in respect of this Bill and in respect of the forthcoming land reform legislation. The Committee was, however, disappointed that the Equality Impact Assessment was not made available at the time of the publication of the Bill and is concerned that this delay may have had an impact on the effective scrutiny of the Bill.

The comments of both the Local Government and Regeneration Committee and the Rural Affairs, Climate Change and Environment Committee in respect of the Policy Memorandum and EQIA have been noted.

The information to be included within the Policy Memorandum is a matter of balance between providing information on the policy underlying the major proposals and changes of the Bill without overwhelming the reader with too much detail on the provisions themselves. The Explanatory Notes are intended to provide detail of individual sections. An easy read version of the Policy Memorandum was also produced to help people get to grips with the proposals contained within the Bill and this was well received.

Regarding the EQIA, the Government put together five different EQIAs and a summary document to reflect the different policy areas of the Bill. They were not ready for publication on the introduction of the Bill and unfortunately they were published later in Stage 1 than we would have wanted due to administrative problems in getting the documents published on the website.

186. We retain concerns about the terminology and language used throughout the Bill and ask the Scottish Government to amend accordingly to ensure the language used is not a barrier to community involvement.

The Scottish Government is committed to drafting legislation in plain language and all Bills are drafted in accordance with this commitment. Guidance and support materials will be produced to help communities to use the provisions of the Bill, and we will work with partners to further promote and explain it.

Part 1 – National Outcomes

107. We agree with the Minister that communities must be empowered. Given this fundamental principle we expect to see the Scottish Government leading by example. In relation to consultation and engagement with those who are affected, i.e. communities, provision should be enshrined in this Part of the Bill by means of a suitable amendment to Part 1.

We would anticipate that all governments would want to consult widely and inclusively on the national outcomes as a whole and consider this is best achieved by a broad provision which does not limit the scope of the consultation in any way.

If a review related only to individual outcomes or particular topics, it might be more appropriate to have a more focused consultation with particular sectors or individuals. The current wording allows flexibility for the consultation process to be appropriate to different situations.

We have taken on board the views of the Delegated Powers and Law Reform Committee that there should be a formal role for the Scottish Parliament in the process of determining the national outcomes. Therefore, we propose to bring forward amendments to require Scottish Ministers to consult the Parliament, using the procedure provided for under rule 17.5 of the Standing Orders. That could also provide an opportunity for the Parliament to comment on the consultation process that has taken place.

108. Given the focus placed on scrutiny of outcomes we consider the Scottish Government, not least to inform budget scrutiny by the Scottish Parliament, should report annually on the extent to which national outcomes have been achieved. The report should be available before the annual draft Scottish budget is published.

The Bill provides that the Scottish Ministers must regularly and publicly report progress towards the National Outcomes. This is currently done through the Scotland Performs website, which provides an up to the minute picture of progress towards the national outcomes. Updates are continually made as soon as the latest data becomes available.

This Government provides a Scotland Performs Update to support the draft budget scrutiny process, including performance scorecards and narrative to show performance against national outcomes.

For future governments, the format and timing of the reporting should be for the then Scottish Ministers to decide, allowing for further innovative approaches to be developed.

Part 2 – Community Planning

172. We would like to see some of the various engagement requirements under this Part translated into empowerment. It is important that powers are exercised at the lowest possible level. We look forward to seeing the promised amendments from the Government at Stage 2.

The then Minister for Local Government and Planning told the Committee that we are happy to give consideration to amendments that strengthen the accountability of CPPs to their communities². We propose an amendment to make it explicit in the Bill that CPPs must publicly report on their progress each year to their communities. The detail of what this reporting should include would be for guidance, which we anticipate will be shaped by the views shared by the communities that they are effectively participating with throughout community planning.

The Bill is intended to ensure participation with communities lies at the heart of community planning. Section 4(5) already requires CPPs to make all reasonable efforts to secure the participation of any community bodies which they consider are likely to be able to contribute to community planning, and take reasonable steps to enable these bodies to participate where they wish to. We are considering whether further amendments can further reinforce the expectation that community bodies should be able to participate throughout the community planning process.

173. The Bill should require CPPs to seek involvement and input from a level below that of community representatives. It is for the Scottish Government to suggest how this be done, and as importantly, how it will be assessed.

We agree that, for participation to be effective, it should be at a level closest to those it seeks to support. Section 4(8) provides a definition for community bodies which is purposefully wide. These bodies do not need to be formally constituted. They may represent geographic communities or communities of interest (e.g. vulnerable adults or children). They may be resident in the area or otherwise present (e.g. the business community).

None of this prevents CPPs from engaging directly with full communities or sections of the local community. However, we expect community participation to apply throughout the community planning cycle (including understanding needs, circumstances and opportunities; identifying local outcome priorities; working through how to respond to these local outcomes; reviewing progress made on these local outcomes; revising approaches where necessary). For community planning to be dynamic and effective throughout this cycle, the most effective community involvement will often come from representative bodies.

174. There should be an explicit requirement on all CPPs to include community capacity building in local plans and to report on progress along with setting out future plans in every annual report.

² Scottish Parliament Local Government and Regeneration Committee, *Official Report*, 12 November 2014, Col 21

Section 4(5) already places duties upon CPPs to make all reasonable efforts to secure the participation of community bodies that can contribute to community planning. Section 9(3) places duties on partners to contribute such funds, staff and other resources for the purpose of securing the participation of community bodies to the extent that those bodies wish to do so.

We are considering an amendment to the Bill, to require CPPs to account for the quality of their participation with community bodies as part of their annual reporting. Guidance could set out what CPPs should cover in fulfilling this duty. Similarly, guidance can set out what CPPs should include in their local outcome improvement plans.

175. As a minimum we would expect the Bill to require annual reports from CPPs to comment on community involvement across the area, including setting out the steps taken to consult with and involve individual communities, and to report on successes in this area. CPPs should also be required to report on how they have developed contacts with local communities over the previous year and the steps they are planning to take to extend and increase involvement of local communities in the coming period.

As stated above, we are considering an amendment to the Bill, which would place a duty on CPPs to account for the quality of their participation with community bodies as part of their published annual progress report. Guidance could provide further detail of how CPPs should fulfill this duty.

176. Overall we are not convinced this Bill goes far enough to move CPPs from their current top-down approach and recommend further statutory provision is made to ensure this is both clearer and measurable.

The Bill reflects a model for community planning that attracted substantial support from respondents to the Scottish Government's second consultation paper (November 2013). It is a model which is both strategic, and responsive to the diversity of needs and circumstances that face different communities within a CPP area.

The strategic aspect to community planning is critical. CPPs are expected to prioritise local outcomes for their area in their local outcome improvement plan, based on their understanding of local needs and circumstances and the input of communities. As stated at para 49 above, the National Community Planning Group is encouraging CPPs to focus efforts on a small number of priorities where they can make the biggest positive difference for their communities, including to tackle multi-faceted disadvantage. In their report "*Improving Community Planning in Scotland*", the Accounts Commission and Auditor General highlighted this development as an example of improving leadership by the NCPG³.

³ Page 4 and para 21

At the same time, CPPs need to be clear about the diverse nature of needs, circumstances and opportunities for different communities in their area (both geographic communities and communities of interest). They should reflect these in setting their priorities for improving local outcomes and reducing inequalities, and in how they act on these priorities.

While the recommendation focuses on the need for specific statutory provision, our general position is that there is an important place for both that and statutory guidance. In particular, guidance can add real value to new arrangements in ways that statutory provisions alone cannot, because it can be shaped with stakeholders around their needs. We will continue the open and inclusive approach we took to the development of the Bill in creating that guidance, and in drawing up the secondary legislation. We can expect to establish groups of stakeholders to develop guidance on each topic, building on our engagement at earlier stages of the process, and to consult publically and widely on the drafts produced in this way. We will ensure a balance is obtained between the various interested sectors in the Bill, in particular between the public and community and voluntary sectors. We intend to create straightforward guidance so that everyone can understand the rights and duties created by the Bill and take advantage of the opportunities it offers. That will include Easy Read versions where appropriate. We will also build on the good practice and advice already available and ensure we get the benefit of the experience and understanding of all our stakeholders.

177. The Bill should be clearer as to the expectations in relation to leadership, governance and audit arrangements that apply to CPPs.

Section 8 of the Bill provides clarity about governance duties and provides a basis for shared leadership among the governing partners listed in section 8(2). It makes it clear that it is the governing partners who are responsible for facilitating community planning and ensuring that the partnership carries out its functions efficiently and effectively.

Guidance can set out in more detail how CPPs and partner bodies should exercise effective leadership and governance, similar to how Best Value guidance sets out leadership and governance expectations for local authorities and public bodies).

CPPs are already subject to audit without statutory provision and we welcome the stimulus that external audit has provided to support on-going improvement in community planning.

178. We remain unclear how the Scottish Government, who supply most of the funding spent by CPPs, intend to measure and hold to account each CPP on their achievement of outcomes and value for money. We consider the Bill must explicitly include this, building on The Statement of Ambition.

179. The above applies equally to individual CPP partners on their involvement, the Bill should be clear about their accountability for the performance of the CPP.

Within the CPP, the Bill establishes clear duties for partner bodies on how they contribute to community planning, review progress and provide effective overarching governance. The lines of accountability for community planning partners are unaffected by the introduction of the Bill and remain the same. e.g. NHS to Scottish Ministers, Local Authorities to their electorate. We intend to take steps to ensure that, for those public bodies that are listed in Schedule 1 to the Bill, their contribution to community planning is reflected more consistently as part of how they are held to account for their performance.

181. We do not consider the Bill, as currently drafted, makes it clear that priority must be given to CPP initiatives over those of individual partner organisations. This Bill requires to be clearer around the provisions requiring the sharing of budgets by all CPP partners.

We disagree that the Bill should isolate CPP activity from their broader responsibilities or “give priority” to one over the other. What is important is that partners contribute positively to community planning and, having agreed what they do to support local outcomes, all partners provide the resources agreed within the CPP (section 9(3) refers).

The duties of joint resourcing for community planning partners have less to do with sharing budget information, and more to do with providing and aligning funds, staff and other resources towards shared priority local outcomes. We agree with Douglas Sinclair, Chair of the Accounts Commission, who told the Public Audit Committee: “the challenge for CPPs is not to argue about mainstream budgets but to get into budget areas that overlap and where they can make a difference to reduce inequalities and their particular priorities”.⁴

182. Annual reports should be both backward and forward looking. As well as reporting under section 7(2), on whether there has been any improvement in the achievement of each local outcome set out in the local outcomes improvement plan, CPPs should be statutorily required to report intended actions and activities.

We disagree that legislation should specify that an annual report must include both backward and forward looking dimensions. Sections 5 and 6 already set out arrangements for the development, review and revision of local outcomes improvement plans. Separate arrangements in section 7 cover the preparation of annual reports on progress made.

We are happy to consider whether CPPs should be expected to produce additional material on their future plans, as part of statutory guidance. However, we would not expect that this should be set out within a published annual report. To be valuable, any statement of future plans would need to be published in advance of the reporting year in question; while any report on progress could not be produced until the reporting year in question had ended. So we are not clear how a single report could

⁴ Scottish Parliament Public Audit Committee, Official Report, 3 December 2014, col. 14

set out both a progress report for one reporting year, and planned activities for the following year.

183. A deadline for reporting should be specified. We recommend no later than 6 months after the end of the period in question.

We agree that a deadline should apply to the publication of annual reports. The currency of reporting has an impact on the usefulness of the information contained within the report. We consider that guidance will provide an opportunity to address specific timing and will engage with stakeholders to determine a suitable timeframe.

184. If Scottish Enterprise are to be included as partners their remit requires to be amended to include community support along the lines of that of Highland and Island Enterprise. Equally they must be required to comply with all requirements, including budget sharing, to avoid any perception that engagement by partners is optional.

Scottish Enterprise is an important community planning partner with its current remit. Changing its remit would require substantive changes to the Enterprise and New Towns (Scotland) Act 1990, and we do not consider the case for such significant change has been made.

Scottish Enterprise will be subject to the same duties as are placed on other partners listed in Schedule 1 to the Bill, including the duty in section 9(3) to contribute such funds, staff and other resources as the CPP considers appropriate with a view to improving local outcomes and for the purpose of securing participation by community bodies. This should not be confused with “budget sharing”. As the then Minister for Local Government and Planning explained to the Committee on 12 November 2014:

“I can guarantee to Mr McDonald and to the Committee that Scottish Enterprise is very mindful of our obligations on community planning, as was reinforced during my recent visit. Lena Wilson, the chief executive, is very clear that, although Scottish Enterprise might not be bringing its budget to the table, it should be bringing its expertise, support, networks and contacts to the table. That is the kind of support that a community planning partnership would want.

The bill deals with what is agreed at community planning partnership level. Scottish Enterprise can bring its business expertise. Economy is one of the key themes in community planning, and Scottish Enterprise is of course well placed in that regard.”⁵

185. The third sector and housing bodies should be given a more prominent role, short of becoming a partner at the partnership board of CPPs.

We have taken steps throughout the Bill to ensure the effective participation of community bodies, which can include the third sector and housing bodies, is secured

⁵ Columns 25, 26

and acted upon. However, we do not consider that it would be appropriate to place statutory duties on third sector and housing bodies. We are happy to consider providing further detail about their role in statutory guidance.

186. The bill should explicitly encourage the involvement and participation of the private sector and local business with CPPs.

The Bill already reflects this. As described above, duties are placed on partners to secure participation of community bodies and such other persons as it considers appropriate. The definition of “community bodies” in section 4(8) extends to communities not resident but otherwise present in the area of the local authority, which can include local businesses.

187 We do not consider sportscotland should be included as partners in CPPs.

We understand that sportscotland have written to the Committee to clarify their position. Their inclusion in Schedule 1 to the Bill is in line with the terms of their response to the Scottish Government’s second consultation on the Bill proposals⁶, as they recognised the potential contribution they have to make to work with others in community planning. As with other statutory community planning partners, the extent of their involvement and where within the community planning process they get involved may vary from one CPP to another, as it currently does. This is addressed in the Bill, with section 9(1) providing that a CPP may agree that a particular partner need not comply with a duty or need only comply to such an extent as agreed by the partnership.

188. Provision should be made in the Bill for other public bodies to be full CPP partners as appropriate, based on local circumstances and need. We have in mind for example DWP and transport partnerships.

Those bodies which are community planning partners are listed in Schedule 1 to the Bill and Scottish Ministers by regulations will be able to add, remove or amend this list. The Committee may wish to note that transport partnerships are already listed in Schedule 1. Individual CPPs may agree to participate with other public bodies not included on the list as they agree between themselves. The Bill does not prohibit participation with other public bodies.

However the Department of Work and Pensions is a reserved body, and therefore cannot have duties placed on it by Scottish legislation.

190. The Bill must make clear the linkage between local improvement plans and single outcome agreements.

We have attempted to do make this clear previously in the policy memorandum which confirms that Local Outcome Improvement Plans are the equivalent of Single

⁶ <http://www.scotland.gov.uk/Resource/0044/00445251.pdf>

Outcome Agreements – we have used the new wording in legislation to more clearly articulate what their purpose is.

Part 3 – Participation Requests

260 – 264, 268. Given the need for this Bill follows the failure of voluntary arrangements we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public service authorities to produce periodic public reports. This would include:

- The arrangements made by each body to support communities to utilise the provisions (instead of requiring a named officer)
- The methods used to encourage community participation, and comment on how successful they have been.
- The steps taken to underpin the community focused provisions in the Bill (Parts 3 and 5). It should also identify those communities which have been supported along with a summary of the support provided and details of how successful this has been.
- How they have built capacity in communities which has allowed them to take advantage of participation requests and asset transfer requests. In addition it should set out measures taken to address inequalities between communities in their area.
- Steps taken to provide information to communities, including publicity, and how successful this has been in making the participation request process open to all.

270. Finally, we recommend information be included in the reports on public service authorities' willingness to allow community participation; the number of participation requests made; the number refused; and an explanation of organisational initiatives which encourage community participation in shaping of and the delivery of services.

The same recommendations are applicable in relation to Part 5 (paragraphs 339-341)

We recognise the need to monitor the progress of public service authorities and relevant authorities in implementing the provisions of the Bill. We will bring forward an amendment to require public service authorities and relevant authorities to provide an annual report. We would require that the annual report covers the number of requests received, the results of those requests, together with narrative information about the measures taken by each authority to promote the provisions of the Bill and support community bodies in making requests.

267. We recommend the removal of the need for an application to be by a group and in the event of an application under this Part by a group for the requirement for any written constitution along with any other restrictions

which could dilute the community accessing these provisions. For any that are to remain we expect to hear compelling reasons for their inclusion otherwise as the process, which is designed also to assist public service authorities in improving services, should be open to all.

Public authorities should use a range of engagement and participation approaches to allow all members of our communities to be involved in the design and delivery of services, including individuals. Participation Requests are a specific mechanism designed to enable proposals to be brought forward by groups with a common interest and purpose. The structure of the provisions (requirement to establish an outcome improvement process and report on the outcome of that process) would be disproportionate if it were applied to suggestions from individuals with no wider support.

The requirement for a written constitution is intended to ensure that the group is open, inclusive and representative, controlled by the members of the community which it claims to represent. This addresses concerns raised in consultation that the provisions could be used by individuals or closed groups to further their own interests, or without effectively seeking the views of those the proposals are intended to benefit. Model constitutions will be provided, as is done for community bodies under the community right to buy scheme, to ensure that it is as easy as possible for any group to agree a suitable constitution.

269. We recommend complaints concerning the handling of participation requests made to the Scottish Public Services Ombudsman (SPSO) are separately identifiable in their records and shown in annual reports. This will enable implementation and effectiveness of the new process to be monitored.

The SPSO publishes statistical information on all complaints on its website, and highlights the main trends and top categories in its annual report and individual sectoral reports each year. Almost all individual decisions made by the SPSO are also published either in a public interest report or in a shorter summary report. These can be searched by keyword as well as subject on the website.

The SPSO seeks to ensure that the categories used in its statistics and analysis are meaningful and allow for comparison across authorities. If there are too many categories they may overlap or there may be too few cases in each category to allow meaningful analysis. Categories are reviewed as necessary to reflect changes in legislation or in the nature of complaints being brought.

The SPSO's annual report is laid before Parliament each year. Under section 17(3) of the Scottish Public Services Ombudsman Act 2002, the SPCB can provide directions as to the content and form of the report.

Part 5 – Asset Transfer

339 – 341. Given this Bill has been found to be necessary we consider it vital progress is closely monitored. To allow that to happen we recommend the Bill require all public bodies to produce periodic reports.

Our recommendations in Part 3 (paragraphs 261-265) in relation to capacity of communities also applies to Part 5.

We recommend information be included on relevant authorities' willingness to respond to asset transfer reports: the number of asset transfer requests made; the number refused; and an explanation of organisational initiatives which encourage transfer of assets to communities.

Please see the response under Part 3.

342-344. The Bill should stipulate a 6 month maximum time limit following receipt of community transfer body's offer within which relevant authorities must conclude contracts unless otherwise agreed by all parties.

Any delay beyond the above period must be reported to the Chief Executive of the relevant authority setting out the reasons why an asset transfer has not been concluded.

Any breaches of the period must be reported in the report.

The Minister set out in his letter to the Committee, dated 17 December 2014, how the provisions in the Bill would work in this situation. If no agreement is reached within 6 months, the transfer will fall and any agreement will be of no further effect. However, the community transfer body and the relevant authority can agree an extension to the period, or failing that the community transfer body can apply to the Scottish Ministers to direct that the period should be extended, so that negotiations can continue. This puts the community body in control of the situation if they consider that the relevant authority is delaying agreement. The Scottish Ministers can direct the period to be extended more than once. The relevant authority cannot dispose of the property to any other person until after any extended period expires.

It is not clear how the situation would be resolved under the Committee's proposal if the time limit is breached, only that the matter must be reported to the Chief Executive of the relevant authority. We consider that this provides less benefit to the community body than the recourse to Scottish Ministers currently provided by the Bill.

We are happy to agree that the annual report proposed in paragraph 341 should include information on any requests where the contract has not been concluded within the 6 month period.

345. To enable groups to assess the funding options available to them we recommend the Bill should stipulate that as a minimum the information listed

at paragraph 345 (price, running costs etc) be included in subordinate legislation [on information to be provided to the community transfer body].

The Bill provides for Ministers to make regulations about information which a community transfer body may request from the relevant authority in advance of making an asset transfer request, and how the relevant authority is to respond. The aim of placing this information in subordinate legislation is to provide for flexibility. We will consult separately on the detail of those regulations, taking into account the views expressed in consultation on the Bill and in the evidence provided to the Committee.

346. We welcome the Scottish Government's commitment to require all relevant authorities subject to Part 5 of the Bill to provide a publically available asset register.

We agree this will be helpful to enable community bodies to understand the range of assets that may be available for transfer.

347. In addition we recommend the Scottish Government gives consideration to the various pieces of legislation which prevent the Forestry Commission from leasing land to communities for forestry purposes, and in particular, the leasing to not-for profit industrial provident societies to enable greater use by communities of their land.

We propose to bring forward amendments at Stage 2 to extend the range of community organisations that can lease land for forestry purposes, to ensure it aligns with the policy aims of the Bill and the amended Land Reform (Scotland) Act.

348. The Minister's commitment to put in place an appeal process for refusals of asset transfers by the Scottish Ministers is welcome. We look forward to hearing detail of the framework.

The framework is expected to be similar to that for local authority review of their decisions. The current provision for appeals and reviews, under section 58 and 59, allows for detailed procedures to be set out in regulations. We will work with stakeholders to develop appropriate procedures for appeal and review by the Scottish Ministers.

349. We recommend the Bill detail how the appeal process for relevant authorities, local authorities and Scottish Ministers will apply to the valuation of an asset and the conditions attached to the transfer.

The current provisions allow the appeal and review processes to consider, and if necessary alter, any terms and conditions attached to the transfer. We consider that the amount set for purchase or rent would also be a term or condition in this context and could therefore be considered in any appeal or review.

350. The Scottish Government should specify which organisational structures it deems appropriate for ownership of assets.

Section 53 sets out the criteria for community transfer bodies that may request transfer of ownership of land. At present this includes companies and Scottish Charitable Incorporated Organisations (SCIOs), as well as bodies that may be designated by the Scottish Ministers as eligible to request transfer of ownership. We intend to bring forward amendments to add Community Benefit Societies registered under the Co-operative and Community Benefit Societies Act 2014.

All community transfer bodies (other than those designated by the Scottish Ministers) must meet the criteria for community-controlled bodies set out in section 14, including the requirement that all surplus funds or assets of the body are to be applied for the benefit of the community to which the body relates. Co-operatives and Community Interest Companies are therefore excluded from the legal forms eligible to request transfer of ownership, because they are able to distribute profits to members.

Part 6 – Common Good

397. We recommend the Bill be clarified to make it clear to local authorities and communities that no conflicts exist in relation to the transfer of common good assets under Part 5 of the Bill.

Any restrictions on the disposal or use of property, whether as a result of common good status, title conditions or other restrictions, will apply in the case of asset transfer as they would to any other sale or lease. This will be clarified in guidance. However, common good status would not prevent a community body from leasing, managing or using the property, provided this was in line with the purposes for which the property was originally intended

398. Given the approach outlined by the Minister we see no difficulty in the Bill specifying a maximum timescale for the compilation and production of Common Good Registers which we recommend be no later than 5 years from Royal assent. Such timescales would also include the requirements on local authorities to report at specified intervals.

Since they must have sufficient information to account for the value of their common good fund, we would expect authorities to be able to publish their proposed lists of common good property relatively quickly once the detailed requirements are agreed. As has previously been confirmed, it will not be necessary for authorities to confirm the status of every item in their own lists or suggested by representations before placing it on the register. Some items may need to be marked as unconfirmed until such time as detailed investigations, and if necessary legal proceedings, are carried out. We therefore consider that it should take no more than 3 years for authorities to establish their common good registers, although not all items on the register will have their status confirmed within that time. The requirement to begin the process of establishing a register will come into force as soon as the relevant sections of the Bill are commenced.

Local authorities are required to maintain their registers once established. This will entail updating the status of any items formerly under investigation, and adding any proposed through consultation. It is not clear what additional information would be provided through periodical reporting.

399. We note evidence on the impracticalities of being required to consult all community councils within a local authority area on specific common good assets, especially geographically larger councils. The Bill should be amended to permit regulations to allow for a necessary degree of flexibility.

We recognise the issue for larger local authorities which may have separate common good funds deriving from different burghs. We will bring forward amendments to address this.

Part 7 – Allotments

459. On issues such as the size and number of allotments, we agree with the Minister that setting a defined standard plot size on the face of the Bill would not be helpful. This would remove local flexibility from councils, however we would like to see guidance covering this matter.

Whilst we do not intend to include on the face of the Bill any provision prescribing a standard plot size, we are considering further amendments in this area.

460. While we expect Local Authorities to take the lead in making land available for allotments etc, we expect other public bodies to look closely at their land holdings and respond positively to demand from communities. We recommend the Bill widen the responsibility to include the CPP to ensure the other partners are engaged.

We agree public bodies should “look closely at their land holdings and respond positively to demand from communities”. This could include asset transfer requests made under Part 5 of the Bill. The Scottish Government has supported a number of initiatives to develop growing spaces in different public sector scenarios including; the transformation of vacant City Council land in the Toryglen area of Glasgow for community growing, and the establishment of growing space at the Royal Edinburgh Hospital (NHS Estate) amongst others.

However, we do not accept the Bill should place a statutory duty on CPPs to ensure other public sector bodies make land available for allotments, etc. Any such duties would fall on each partner body individually. As with other duties placed on partner bodies, they should be answerable through pre-existing lines of accountability (e.g. NHS boards to Scottish Ministers).

Similarly, while we recognise that community planning can be a vehicle in which public bodies consider joint approaches to asset management, decisions about whether and how to pursue these approaches should be for CPPs themselves, where they consider this can provide a valuable contribution to their work.

461. We recognise local authorities are the appropriate public sector organisations to draw up local food growing strategies. However, confining this duty simply to local authorities would be a missed opportunity. We recommend that food-growing strategies be made a CPP duty, so that all CPP partners will have an obligation to contribute to meeting the objectives of the strategy through the Single Outcome Agreement. This should be developed in such a way as to support the forthcoming United Nations Sustainable Development Goals from 2016 onwards

462. The Scottish Government should indicate how it will ensure CPPs are required to engage private and commercial sector land owners to assist in supporting food growing and allotments.

463. CPPs should be required to support the delivery of access to food-growing activity as an objective. This could be achieved by providing access to publicly-owned land held by public sector agencies or by providing other resources such as funding the development of growing skills, or utilising existing programme or skills within the public sector (for example on decontamination of land etc.). We recommend guidance make this duty clear along with a requirement to report on how it is being achieved.

Recommendations 461 to 463 cut across a fundamental principle of the strengthened community planning arrangements in Part 2 of this Bill. The Bill does not stipulate any themes or policy issues that CPPs are required to prioritise within their Local Outcomes Improvement Plans. It is for CPPs to determine their own local outcome priorities, reflecting their understanding of local needs and circumstances and in light of community participation. As a matter of policy, and as the Accounts Commission and Auditor General highlighted as an example of improved national leadership in their report "Improving Community Planning in Scotland", the National Community Planning Group has advised that CPPs should focus their collective energy on where their efforts can add most value for their communities, with a particular focus on tackling multiple inequalities⁷. Indeed the audit report praised Glasgow CPP for narrowing their focus towards three specific priorities for their area that reflect its greatest challenges, with associated outcomes.

Against these backdrop, we do not agree that there should be any mandatory themes or outcome areas which all CPPs must include in their Local Outcome Improvement Plans. We also do not agree that food-growing strategies should, uniquely, be such a mandatory element, when there are no others. To impose such a "top-down" statutory duty on CPPs runs against both Scottish Government policy and the Committee's own stated "bottom-up" intentions for Part 2 of the Bill.

In further response to Recommendation 462, the Committee may wish to be aware that, to encourage landowners, both private and public, to make sites available for growing food, Scottish Government supported the production of a 'Guide for Landowners', that was produced by the Community Land Advisory Service in 2013. This Guide provides comprehensive information, suggestions and background

⁷ See also response to Recommendation 176 above

details to equip landowners to play their part in making more land available for local communities to grow food.

464. Local authorities should work to ensure their food-growing strategies are inclusive of the need to develop horticultural skills, especially amongst children.

Curriculum for Excellence (CfE) is the national approach to learning and teaching for young people aged 3-18 in Scotland and is the result of wide-ranging and ongoing engagement and consultation with parents, teachers, educationalists and other key stakeholders since 2002. CfE enables young people to develop four capacities - successful learners, confident individuals, effective contributors and responsible citizens. It provides learners with a range of personalised learning experiences and qualifications that meet their individual needs and aspirations. It also frees teachers from prescription, providing a framework for learning through a set of experiences and outcomes in eight curricular areas.

Guidance produced for local authorities by the Scottish Government last year – ‘Better Eating, Better Learning’ – is clear that within Curriculum for Excellence the development of practical food skills is a key area of learning for children and young people and would include horticultural skills. The Guidance states that, “With careful planning outdoor settings can be accessible to all and are being used effectively to teach children and young people how to plant and grow food, cook over open fires and produce meals from seasonal foods sourced locally.”

The Guidance recognises that the benefits gained as a result of involvement in practical food growing projects includes enhanced community relations and creating partnerships between schools and food businesses. Scottish Government and Education Scotland provide an extensive list of resources on organisations able to support schools in this area

Furthermore, there is a range of quality assured, accredited and relevant vocational training courses and qualifications in horticulture available in Scotland. These range from entry level to more advanced levels as well as a Modern Apprenticeship framework.

Many of Scotland's local authorities already work in active partnership with training providers (eg colleges) to deliver high quality horticultural learning and training. Most of these focus on parks, gardens, cemeteries and landscaping (ie amenity horticulture) but there is flexibility to focus on local food production eg the Loch Lomond & the Trossachs Skills Partnership is helping to pilot a related 'Shared Apprenticeship' on kitchen gardens, and there are other examples of relevant initiatives (Glasgow City Council is one). Approximately 45 secondary schools already include land-based delivery in their curriculum (some again in active partnership with their local college).

465. We recommend the community-based allotment and food growing sector be encouraged to become part of a viable empowering food economy while also ensuring the land available to them is not taken advantage of by the

larger scale commercial food production industry. We look forward to an appropriate amendment loosening the restrictions in section 87 to make this clear.

The Government is proposing to loosen the provisions relating to the sale of surplus produce by removing the need for Scottish Ministers to prescribe what produce may be sold.

Should the provisions be broadened to enable food produced on allotments to be part of the wider food economy this could have the unintended consequence of bringing allotment holders within the scope of the Agricultural Holdings (Scotland) Act 1991 since such production would fall within the definition of agricultural land which includes land being used for the purposes of a trade or business.

Part 8 – Non-domestic rates

500. We are content to have variability in the way this power is used across Scotland and indeed within and across local authority areas, we view the power as one providing increased flexibility to local authorities that can be used to support the creation of new businesses and to sustain existing businesses.

501. We have no concerns about the suggestions of a “race to the bottom”, viewing this power as but one tool for local use principally to incentivise and regenerate local areas. The power can only be utilised within the uniform business rates scheme.

502. We request the Scottish Government to consider ways in which they can promote the use of this power to prioritise regeneration activities within disadvantaged areas.

503. We would be concerned if landlords were to target rent increases on properties receiving relief under this power and encourage the Scottish Government to consider ways in which this could be prevented.

We note the Committee’s points regarding local business rates relief. We would also note the existing scope for local discretion that councils have with regard to some national rate reliefs. Whilst we would not fetter councils’ discretion as to whether or how they use the proposed new power, we will continue to promote regeneration activities in active partnership with councils, drawing on the range of available powers, and note that this new power may afford corresponding opportunities. Any changes to business rates may have implications for rents, and, whilst we will endeavour to observe the effects of any new measures, the responsibility for considering impacts and implications of any local rate relief will rest with the respective council.

Annexe A – Part 4, Community right to buy land

Responses to paragraphs 76, 87 and 98 are included with responses to the general points made at the beginning of the report.

78. The Committee considers that the Part 4 provisions of the Bill have the potential to contribute significantly to sustainable development but agrees with the Scottish Environment Protection Agency which suggested that the Policy Memorandum provides a ‘light touch’ assessment of the sustainable development aspects of the Bill. The Committee considers that the Policy Memorandum could have provided further consideration of sustainable development. The Committee would welcome information from the Scottish Government on its plans to produce further regulation and guidance on this matter.

The sustainable development element of any community right to buy is taken into account when considering each application. The impact will vary widely across the spectrum of cases and the Scottish Government will, of course, ensure that clarification is provided wherever it is required, both through regulation and guidance, and in consultation with stakeholders.

86. The Committee was interested to hear the views of Professor Alan Miller, Chair of the Scottish Human Rights Commission, and considers that human rights could have been brought into the wider context of the Bill. The Committee believes that a wider consideration may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.

Human rights is part of the consideration of any community right to buy. When assessing the community body’s application, Ministers must take account of all facts and assess applications on a case by case basis.

96. The Committee understands that community right-to-buy will be demanded. However, the Committee considers that the Scottish Government should have provided further clarification of how the Community Land Fund’s budget was arrived at and should have considered what parallels could be drawn between it and funding for community right-to-buy in the context of the Bill. The Committee is of the view that the Financial Memorandum ought to have given greater consideration to this.

The SLF has been increased to £10 million from 2016-20 to meet demand, as announced in November 2014. The Scottish Government will certainly monitor the costs associated with the Community Right to Buy as it progresses over the next few years and will continue to keep its funding for this and other community-led activity under review.

97. The Committee is also concerned that the costs for communities and landowners (e.g. legal costs arising from appeals, costs to communities in preparing and developing proposals and bids) and the costs to public bodies

of providing support to communities are unclear. The Committee is of the view that the Financial Memorandum should have better reflected this.

The Financial Memorandum included unit costs for the key elements of the right to buy process, such as valuations, ballots and appeals. The cost to each community body is not collected by the Scottish Government, and varies widely depending on just how each community approached the right to buy. In the Bill as introduced, under Section 47, we have included a duty to provide information about community right to buy, for the purposes of monitoring and evaluating impact

101. The Committee welcomes confirmation from the Cabinet Secretary that the initial view that the rules relating to lottery funding would not have any impact on the right-to-buy. However, the Committee encourages the Scottish Government to clarify this initial view and advise the Committee of any change in that position

We believe the sportscotland submission to the Local Government and Regeneration Committee, that gives rise to these concerns, relates more to asset transfer (part 5 of the Bill), than to community right to buy. We agree that communities should not be encouraged to take on liabilities that they cannot support, and recognise that lottery funding may not be available where a property is bought from the public sector. It is essential that every proposal for community ownership is based on a viable business plan with a clear view of how the project will be sustainable in the long term, identifying future funding sources with appropriate eligibility criteria where necessary.

Assets that have been improved/bought with lottery funding cannot be sold without first informing the distributor of the funding, who must be satisfied that full market value is being sought. Since Community Right to Buy is always valued at market value, this is not a concern for this Part of the Bill.

110. The Committee understands the concerns of stakeholders in respect of areas subject to an active planning consent. The Committee recommends that the Scottish Government give further consideration as to whether amendment at stage 2 is required to provide a mechanism to exempt such sites, for a period of time, to offer greater certainty to the investment and development market.

The Law Society of Scotland raised suggestions that consideration is given to allowing for a mechanism to obtain a certificate exempting a site from community right-to-buy for a certain amount of time. This would be where, in its view, land may be subject to redevelopment proposals and the potential uncertainty that applications could create, adversely impacting on investment decisions.

At the moment, any current development plans or active planning permissions are already taken into account in deciding whether it is in the public interest for the community application to be accepted. In order to keep the uncertainty to a minimum, there is a maximum of 63 days between receipt of an application and a decision on whether or not it should be registered.

As a result, the Scottish Government does not intend to make any amendment to the Bill in this area.

112. It is not clear to the Committee whether specific mention of salmon fishings and mineral rights implies that the right-to-buy is not exercisable in relation to other tenements. The Committee would welcome clarification from the Scottish Government as to whether that is indeed the case.

The Scottish Government appreciates the need for clarity and therefore intends to bring forward amendments at Stage 2 to clarify whether the right to buy is exercisable in relation to other tenements.

121. The Committee heard the views of those who would prefer the Bill to define the characteristics of an eligible community body rather than specify the eligible legal structure. However at this time the Committee remains unconvinced of this approach. The Committee understands that new forms of legal entities that could be eligible may emerge over time but the Committee is comfortable that provision exists to define those entities in secondary legislation. The Committee recommends that any such legislation be brought forward under the affirmative procedure.

The Scottish Government agrees with the views of the Committee and it is intended that any regulations made by Ministers to extend the range of legal entities that can be community bodies will be subject to the affirmative procedure.

122. The Committee welcomes the inclusion of Scottish Charitable Incorporated Organisations in the Bill. The Committee listened carefully to the evidence on the impact of restricting the choice of legal entity to two options and, on reflection, considers that the Bill should extend the eligibility of legal entities to include Community Benefit Societies and Community Interest Companies. The Committee welcomes the commitment of the Cabinet Secretary to consider potential amendments at stage 2 to extend the list of eligible community bodies and recommends that the Scottish Government bring forward amendments to include Community Benefit Societies and Community Interest Companies.

One of the key considerations in whether or not a particular type of community body should be eligible is that all funds raised should be used to benefit the community. In particular that;

s34(1)(g) - provision that any surplus funds or assets of the company are to be applied for the benefit of the community

Scottish Charitable Incorporated Organisations (SCIOs) will also have this requirement within the legislation. Whilst both Community Benefit Societies (BenComs) and Community Interest Companies (CICs) certainly have a community focus, the main difference is that CICs with shares can distribute dividends to individual shareholders. This is not something that is desirable at this moment in time, therefore it is proposed to extend the range of bodies that can be valid

community bodies to BenComs alongside SCIOs and Company Limited by Guarantee but not to CICs at this stage.

Ministers will have the power to make regulations to add additional types of organisational structures at a later date, and therefore if in the future it is considered that CICs would be suitable community bodies that change could be made at that time.

123. The Committee recommends that the Scottish Government also give consideration to the proposals of the Scottish Federation of Housing Associations and the Church of Scotland that the Bill should mention housing associations and co-operatives, and charities such as the Church of Scotland, as community bodies.

The addition of housing associations and charities such as the Church of Scotland to the types of community body would introduce bodies that did not necessarily have a community focus, nor would they be obliged to ensure that all funds are retained within the community. These types of organisation can have a wider, even national, remit and there is a desire to keep a much more local focus. As a result, there are no plans to allow these additional types of community body at this time. However, as mentioned above, Ministers will have the power to make regulations to extend the range of entities that can be a community body if the position changes.

125. The Committee is concerned that the requirement for Scottish Incorporated Charitable Organisations (SCIO's) to have a minimum of 20 members will, in practice, mean that a number of existing SCIOs would be excluded from the definition of an eligible community body and would therefore be unable to apply to register a community interest in land. The Committee considers that the requirement for SCIOs to have a minimum of 20 members is overly prescriptive and strongly recommends that the Scottish Government bring forward relevant amendments at stage 2.

The Land Reform (Scotland) Act 2003 already provides that Ministers may disapply the requirement for community bodies to have twenty members, and this Ministerial power will apply to all types of community bodies in Parts 2, 3 and 3A of the 2003 Act.

However, in light of the Committee's concerns, the Scottish Government will bring forward amendments to reduce this limit to 10 members, to ensure that smaller communities are not disadvantaged.

134. The Committee listened to the concerns of stakeholders in relation to the provisions of minutes upon request and recommends that the Scottish Government give consideration to this provision and the need for further clarification and reflect on the impact of this provision on existing community bodies. The Committee recommends that the Scottish Government consider whether there are other means to affect the policy objective such as a requirement for community bodies to enact relevant bylaws or rules, and bring forward relevant amendments at stage 2.

The policy aim of this requirement is to encourage transparency and openness in the right to buy process. In response to the Committee's concerns the Scottish Government is giving consideration to whether it should qualify the application of this requirement, in relation to the types of minutes it applies to and whether it applies to minutes of meetings that took place prior to commencement of the Bill. Any qualification would be brought forward by way of an amendment to the Bill at Stage 2. At this stage it is considered that the current qualification that the community body must only respond to requests for minutes that are reasonable provides sufficient security to community bodies that they will not be placed under an overly onerous burden.

140. The Committee recognises the practical issues for communities in considering an interest in land and agrees that Ministers should not be artificially restricted by a six-month time limit in considering any relevant material. The Committee would welcome further consideration of this section by Ministers.

One of the factors that is taken into account in a community body's application for a right to buy is the level of community support that they have received. At the moment, it is considered that 6 months is a reasonable timescale within which evidence of support should be received. In the evidence received by the Committee, some of the issues raised were that it could take longer than 6 months to form a community body, or that feasibility or other studies could date back before that period. To date, all applications received have demonstrated evidence of community support within the 6 month deadline, and therefore there is no intention to amend the 6 month timescale on the face of the Bill at this stage. However it is intended to take a regulation-making power so that Ministers can amend the time limit in the future, should a problem become more apparent.

151. The Committee recommends that the Scottish Government should take into account the recommendations of the Land Reform Review Group with respect to the "right lite" for registration, i.e. providing communities with a right to register an interest and to be notified when land was coming on to the market or ownership was changing, that would trigger the process of the "heavier" right of registering a right of pre-emption.

There are practical issues surrounding registration that would make this difficult in practice. First of all, a community body would still have to be created, in order to register the interest in the first place. If the "heavier" right was then triggered, this body would still have to be compliant with the Act. For the right to be triggered, an area of land would have to be identified for Registers of Scotland to "flag", otherwise, how would they know that it had been part of a registration of interest? By default, because there was no prohibition, the fact that it was put up for sale, automatically means that it is considered to be a late application. The easiest solution would seem to be to register an interest as part of the existing Part 2 application.

Current changes within the Bill, as part of the late application process, could allow work undertaken as part of identifying that interest to be considered as “relevant steps”.

152. Notwithstanding that, the Committee considers that the registration process requires considerable simplification. The Committee was also interested to hear the proposals from stakeholders to allow communities to register a purpose. The Committee considers that there may be scope for a dual registration process to enable registration for specified areas of land or buildings and to enable registration for a purpose which could potentially be met by a range of assets. The Committee recommends that the Scottish Government give consideration to a simplified registration process that would also include the option to register “a purpose” and bring forward amendments to that effect at stage 2.

Current changes to the late application process mean that work undertaken to identify a community’s needs, and requirement for land for a particular purpose, could be taken into consideration as examples of relevant steps, which it could not in the original legislation. This means that, should a community be actively considering options, it is not penalised simply because land is put on the market whilst that process is underway.

162. The Committee is keen to ensure that the provisions in Part 4 of the Bill simplify the provisions of the 2003 Act and effectively support communities in their aspirations to acquire land and deliver wider public and sustainable development benefits, whilst balancing this with the need to protect the rights of land owners. The Committee is aware that whilst encouragement and support should be given to communities in registering an early interest in land it is likely that for many communities and applications late registration will continue to be the norm. The Committee considers that the process for late registration should reflect the practical reality for communities and should be redesigned to accommodate this.

163. The Committee has concerns about the ‘good reasons’ test but is also concerned that removal of the ‘good reasons’ test and replacement of this with the need to show ‘relevant work’ may make the process more restrictive and more onerous. The Committee remains unconvinced, where there is a late application, of the need to impose a requirement on communities to show either good reason or demonstrate relevant work and recommends that the Scottish Government bring forward amendments at stage 2 to remove this requirement.

164. If the Scottish Government decides not to amend the Bill to remove the requirement on communities to demonstrate relevant work/steps, the Committee urges the Scottish Government to de-couple the requirement for the work and application to be made by the same community body.

The existing provisions of the Land Reform (Scotland) Act 2003 provide that for a late application a community body is required to show there were good reasons why

the community body did not secure the receipt of an application before the land went on the market. This means that it is the community body which must have tried to secure receipt of an application. The Bill amends this so that if such relevant work or steps as Ministers consider reasonable was carried out by a person, and such work or steps were taken sufficiently in advance of the land being put on the market, and the work or steps related to the same purpose as is proposed in the application, and that it was carried out by the community body, or by another person with a view to an application being made by the community body, then Ministers may approve a late application.

This means that first of all, there does not need to have been an attempt to secure receipt of an application, only that relevant work or steps have been taken and are considered reasonable. As noted in the responses to earlier recommendations, this could be things such as identifying a need within the community, or undertaking work to identify suitable land for a specific purpose.

Secondly, it allows for this work to have been done by a person other than the community body, as long as it was with a view to an application being made by a community body. This means that the work could have been undertaken prior to the community body being formed, which removes another obstacle in relation to late applications.

169. The Committee heard a range of views on the appropriate timescale for the re-registration of an interest in land. The Committee considers the most significant requirement is the need to simplify the registration process to one of a presumption in favour of re-registration unless there has been a material change of circumstance. The Committee believes that this should substantially reduce the burden on community bodies, particularly if those community bodies have multiple registrations. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

Ministers already have the power to prescribe a separate form to be used for re-registration that could be simpler than the original registration form. The Scottish Government's intention, through introducing a simpler re-registration form, would be to reduce the burden on community bodies when submitting their re-registration application. The main criteria that would be likely to be shown is that there is continued community support, the business plans have not changed, and that the land identified has not changed.

This would not, however, create a presumption in favour of re-registration as it is considered important for Ministers to ensure continued public support for the continued registration. It is intended to use current Ministerial regulation making powers to prescribe a simpler form for the purposes of re-registration and therefore ease the burden on community bodies.

171. The Committee raised the issue of the inability of applications to be amended once submitted with the Cabinet Secretary and recommends that amendments be brought forward by the Scottish Government at stage 2 to enable applications to be amended once submitted.

The Scottish Government does not intend to bring forward amendments at Stage 2 to allow applications to be amended following receipt by Ministers due to the overall effect this would have on the time of the application process.

If a process was introduced to allow the amending of applications an additional time period would need to be introduced allowing for the other parties to reconsider the amended application and make any representations on that amended application. It would also open up the potential for applications to be appealed if they have been changed to any large extent.

As part of the current process, the existing right to buy team provide advice and guidance to communities to ensure that there are no technical errors in their applications, to allow the application to be judged solely on its merits.

175. The Committee questions the rationale for the requirement for an owner to inform Ministers of an exempt transfer being made and considers that it should be sufficient to include a declaration in the disposition. The Committee recommends that the Scottish Government reflect on this and consider whether amendment to this provision is required at stage 2.

It is the Scottish Government's view that it is important that a land owner notifies Ministers of an exempt transfer being made, in order for the register of interest to remain accurate and up to date, and that the community body's application names the correct owner of the land in question.

This will also ensure that, by being notified of a change of ownership, it will save time and effort should the land come on the market at a later date, and will ensure that the community body and Ministers contact the new owner of the land.

180. The Committee would be concerned if landowners were found to be seeking to thwart legitimate applications from communities. The Committee considers that the existence of an option to purchase should not automatically exclude a community application and recommends that the Scottish Government consider this provision and bring forward amendments at stage 2 to ensure that land and buildings under option are not excluded from eligible land for registration or purchase.

It is the Scottish Government's view that a valid option agreement should be allowed to stand. A valid option agreement is the equivalent of missives being concluded in a transaction, therefore Ministers must decline the application.

182. The Committee welcomes the provisions within section 36 which provide greater flexibility by removing the requirement that half the members of the community must vote on an application. The Committee asks the Scottish Government to clarify what considerations and criteria will be taken into account in assessing whether a sufficient proportion of the community has voted. The Committee recommends that the Scottish Government issue guidance on this matter.

Current guidance already asks that communities should provide good reasons why community support is less than 50%, why it is in the public interest to allow an application to proceed in these circumstances (which should be exceptional) and why this is considered to be sufficient support for the purchase to proceed. These are considered on a case by case basis.

To attempt to identify particular criteria would make this less flexible, however the Scottish Government will ensure that the guidance is strengthened in this regard.

186. The Committee questions whether there is any practical merit in the Minister and the community body providing background information to the balloter, given that the balloter's role is solely to undertake the ballot. The Committee asks the Scottish Government to re-consider the necessity of this provision with a view to bringing forward amendments at stage 2 to delete that requirement.

It is the Scottish Government's view that, in order for the balloter to undertake the ballot, they have to ensure that it is proceeding in a fair and equitable manner, that the ballot question is appropriate in the circumstances and fully covers the issues. It is therefore important for the balloter to have background information in order to meet these criteria. Of course, much of that information is already contained in the community body's application and can simply be referred to rather than having to repeat it.

188. The Committee also questions the requirement of the provision in section 37(4)(b) on fixing notices to the land in relation to right-to-buy applications for separate tenements and asks the Scottish Government to consider whether that requirement could be relaxed for those cases, and, if necessary, bring forward amendments at stage 2.

The Scottish Government will bring forward an amendment at Stage 2 which will require community bodies, who wish to acquire separate tenements where the land owner is not known, to give notice of the acquisition by advertisement in such manner as prescribed in regulations.

191. The Committee considers that, given the significance of the policy objectives of land reform and the Part 4 provisions of this Bill, and the very real difficulties many communities face in building capacity and in securing resources, should Ministers consider the application meets the public interest and sustainable development tests, then it is appropriate that the cost of the ballot be met from the public purse.

Section 51(A), inserted into Part 2 of the 2003 Act by section 37 of the Bill, requires Ministers to meet the cost of the ballot. The application, by this stage in the process, is considered to have already passed the public interest and sustainable development tests, and the community's support for the application has already been indicated in the application.

For both Parts 3 and 3A, the ballot is the first indication of community support, and takes place prior to the receipt of the application by the Scottish Government, and it is felt appropriate that the Scottish Government should not offer to pay ballot costs in all cases, but the intention is that it could reimburse the cost of the ballot in certain circumstances, for example, where a ballot indicated community support.

The Scottish Government intends to introduce amendments at Stage 2, applicable to Part 3 and Part 3A, to include powers for the Minister to make regulations setting out the circumstances in which a crofting/Part 3A community body will be able to apply to the Ministers to have the cost of the ballot reimbursed.

198. While the Committee is concerned to ensure that landowners do not thwart the legitimate proposals of communities, the Committee recognises that there will be cases where landowners, for legitimate reasons (e.g. where family or financial circumstances change) decide to withdraw land from sale after a right-to-buy has been activated. The Committee is of the view that there should be Ministerial discretion on this matter. The Committee considers that further clarification, by way of regulation, will be required to set out the criteria which would form the basis of the Ministerial decision.

The Bill as introduced amends Part 2 by inserting section 60A which provides that Ministers may require the owner of the land to pay any expenses incurred by the valuation process. The Scottish Government will ensure that the criteria which Ministers will consider when making a decision as to whether valuation costs should be recovered are set out clearly in guidance. The guidance will take account of legitimate reasons a land owner may have for withdrawing the lands from sale.

202. The Committee recommends that the Scottish Government give further consideration to the requirement for consistency in the 2003 Act on the treatment of public and local holidays and bring forward amendments at stage 2 to ensure this.

The Scottish Government's view is that it would not be appropriate to take account of public or local holidays as they may differ from area to area, thereby potentially introducing uncertainty and a margin for error to the process. Including public and local holidays will provide absolute certainty in key areas such as timescales for payments dates, valuation dates and appeal dates, whilst allowing community's some flexibility in others.

Community right to buy abandoned and neglected land (section 48)

216. The Committee agrees with stakeholders that the power to extend the community right-to-buy where there is no willing seller should be a power of last resort, to be exercised only when other methods and negotiations had failed. However, the Committee has concerns that this new right, as the provisions are currently drafted, may be almost impossible to exercise, with too many obstacles and opportunities for avoidance on the part of landowners. Notwithstanding this, the Committee believes that the existence of this power is likely to play an important role in incentivising negotiation.

217. The Committee questions the need to restrict the definition of eligible land to that which is considered to be wholly or mainly abandoned or neglected. The Committee is concerned that these provisions, as drafted, may fail to further sustainable development.

218. The Committee also questions why the Scottish Government considers that a definition is needed at all, as the parallel tests for crofting land purchases do not require this.

Comparisons to Crofting Right to Buy

Paragraph 211 of the Committee's report highlighted the comments of Community Land Scotland - it did not believe that there was a clear and fundamental difference between the sustainable development of crofting land (as required by the crofting community right-to-buy in the 2003 Act) and the sustainable development of other land which necessitates the additional requirements of abandonment or neglect in order for it to be eligible for the potential exercise of the new powers under Part 3A.

The Scottish Government's position is that the crofting community right to buy was developed on the basis of the specific issues relating to crofting areas, unlike the proposals for the right to buy abandoned or neglected land which relates only to areas of land that are a barrier to sustainable development because they are abandoned or neglected. The policy aim of the crofting community right to buy was to remove barriers to sustainable rural development by empowering crofting communities. Paragraphs 24, 25 and 26 of the Policy Memorandum to the Land Reform (Scotland) Act 2003 are particularly useful in considering the policy aim of the crofting community right to buy. These paragraphs stated as follows:

"24. The proposals for a crofting community right to buy build upon existing right to buy arrangements for individual crofters and create rights for other crofting communities similar to those enjoyed by crofting communities whose landlord was the Secretary of State (now the Scottish Ministers). It might therefore be argued that new legislation is unnecessary. But, although it is theoretically possible for a crofting community to use the existing right to buy provisions for individual crofters in existing legislation as a means of achieving community control of croft land, this would be cumbersome, risky and costly, with no certainty of success. There is a great likelihood that such an approach would lead to an unsatisfactory solution suiting neither the community nor the landowner. Hence the need for modern arrangements to enable crofting communities to buy their croft land in concert.

25. The crofting community right to buy is of course an unlimited right to buy. It can be exercised at any time, not just when the land comes up for sale. As indicated above, this means that the property market could be affected, and that suitable compensation arrangements are necessary in order to avoid significant ECHR difficulties. The effect on the property market, and the compensation costs, while potentially substantial, are both inherently constrained by the extent of crofting land, and the generally low value per hectare of that land. These two factors mean that the potential disruption and compensation costs of a crofting community right to buy are

much less than the potential compensation costs of a general community right to buy. The Executive believes that giving crofting communities but not other communities an unlimited right to buy is justified by the greater need to support such crofting communities, which are located in the most fragile areas where the potential for a bad landlord to do real harm to the community is greatest.

26. It is not envisaged that the crofting community right to buy will be frequently exercised. It is very apparent that where crofting communities have a good relationship with their landlord there is little inclination on the part of the communities to take on the not inconsiderable burdens of ownership. The crofting community right to buy requires serious commitment from the crofting community to the ownership and management of land as a community asset and is likely to prove to be a costly and complex process. Without needing to be exercised it is expected that its very existence will achieve two important objectives. First, it is likely to create a climate in which landowners will willingly sell land to crofting communities by agreement. Secondly, it will encourage landowners who have monopoly ownership of land in crofting areas to work with and maintain good relations with that community.”

The following statements are particularly relevant:

“The Executive believes that giving crofting communities but not other communities an unlimited right to buy is justified by the greater need to support such crofting communities, which are located in the most fragile areas where the potential for a bad landlord to do real harm to the community is greatest.”

“Without needing to be exercised it is expected that its very existence will achieve two important objectives. First, it is likely to create a climate in which landowners will willingly sell land to crofting communities by agreement. Secondly, it will encourage landowners who have monopoly ownership of land in crofting areas to work with and maintain good relations with that community.”

It is clear from these paragraphs that the policy aims for the crofting community right to buy were different from the policy aims of the new Part 3A. The policy aim of Part 3A is usefully summarised at paragraph 65 of the Policy Memorandum to the Bill which states:

“Land that is neglected or abandoned can be a barrier to the sustainable development of land. In some cases it may prevent the community from developing or improving facilities. There are also cases where derelict or neglected sites become a blight on the surrounding area, and the community could bring the land back into productive use. The Scottish Government considers that, in such circumstances where all other options fail to achieve improvement, communities should be able to acquire the land without having to wait for it to be put on the market.”

This policy aim is different from the aims of the crofting community right to buy, which were the creation of a climate in which landowners willingly sell land to crofting communities by agreement and the encouragement of landowners who have monopoly ownership of land in crofting areas to work with and maintain good relations with that community, in the context of crofting communities having a greater

need for support, being located in the most fragile areas where the potential for a landowner to do harm is greatest. The difference between the aims of both rights to buy is the reason why the tests for each right to buy are different – the tests have been developed in order to meet different policy objectives.

219. The Committee considers that there are convincing arguments that the tests of ‘furthering sustainable development’ and of being ‘in the public interest’ are capable of testing all requirements. On that basis, the Committee recommends that the Scottish Government reconsider the requirement that eligible land be restricted to land which is wholly or mainly abandoned or neglected and recommends that the Scottish Government consider a definition that relates to the wider circumstances which can be a barrier to sustainable development, such as the lack of achievement of the use and/or development of land that could deliver greater public benefit.

Definition of “abandoned” and “neglected”

There is no definition on the face of the Bill of the terms “abandoned” and “neglected” because it is intended that these terms are given their ordinary meaning. It is intended to use the words “abandoned” and “neglected” as descriptions of land that may be eligible land for the purposes of the exercise of the new compulsory right to buy as the words are capable of a broad meaning. This is because it is expected that the broad expressions may apply to a multiplicity of circumstances and should be understood generally.

By using broad expressions, Parliament would therefore be able to confer on Ministers a wide discretion, exercisable in many of circumstances, to consider whether particular land described in an application is eligible for the purposes of Part 3A. Although the exercise of that discretion is subject to judicial oversight, it would not be expected that the Court could read down “abandoned” or “neglected” in a narrow way.

Any attempt to define the expressions further is more likely than not to result in a situation where the words are given a narrower meaning than the broad meaning that would otherwise apply if they are not technically defined.

It is important that any proposal that is included in legislation has been fully considered by both the Scottish Government and stakeholders.

The consultation on the Community Empowerment Bill focussed on the specific issue of abandoned and neglected land, and not on the extent to which land should be used to meet the needs of the community. The former is seeking to provide a means of resolving the problems that can arise as a result of land being neglected and abandoned and it was this policy that was consulted on whereas the latter is a very different issue.

In addition, to ensuring that there is full consultation on proposals, the Scottish Government also has to ensure that legislation is robust, fit for purpose and within legislative competence.

The recent consultation on proposals for a Land Reform Bill explores the potential for powers for Ministers to intervene, where necessary, to overcome barriers to sustainable development. We are currently considering the responses to the land reform consultation and, in doing this, we will also take into account the views expressed during the Community Empowerment Bill.

Draft Regulations

The approach which Ministers would adopt in applying the test of whether the land in a particular application is neglected or abandoned would be determined having regard to guidance and to a multiplicity of different matters. Some of these matters would be mandatory for Ministers to have regard to and for that reason it is intended that the minimum categories of such matters should be prescribed in subordinate legislation. There is power to do so in section 97C(2) and the RACCE Committee have been provided with a draft of Regulations under that power which indicates the sorts of matters that we would suggest that Ministers must have regard to as a minimum.

The matters to which Ministers must have regard when deciding whether land is eligible land are set out in the draft Regulations and fall into three broad categories:

- the physical condition and its effect on the surrounding area, public safety and the environment;
- the use of the land, or lack of use as the case may be, including whether the land is a nature reserve, held for conservation purposes or used for public recreation;
- any designation or classification of the land, such as land which has been classed as contaminated land, or buildings which are listed buildings or scheduled monuments.

The specific matters as set out in the draft Regulations are as follows:

Condition of the land

1. Physical condition

Regulation 2(2)(a) obliges Ministers to have regard to the physical condition of the land or any building or other structure on the land, and the length of time for which it has been in such a condition. This means that Ministers must take account of any physical signs of neglect or abandonment, such as the derelict nature of a building or overgrown weeds. This will be considered in the context of other matters as set out below, such as whether the building is derelict because it is a listed building, or whether a piece of land is overgrown with weeds because it is a nature reserve.

2. Amenity of adjacent land

Regulation 2(2)(b) obliges Ministers to consider whether, and to what extent, the physical condition of the land or any building or other structure on it is detrimental to the amenity of the land which is adjacent to it. It is intended that

“amenity” is given its ordinary meaning, being a desirable or useful feature or facility of a building or place. This might cover, for example, the situation where an a piece of land that appears to be abandoned by its owner is being used for criminal activity, thus discouraging the use of a neighbouring play park by children.

3. Public safety

Regulation 2(2)(c) obliges Ministers to consider whether, and to what extent, the physical condition of the land is a risk to public safety. This could cover situations where derelict buildings are at risk of collapse, or where there are uncovered manholes or electricity wires.

4. Environmental harm

Regulation 2(2)(d) obliges Ministers to consider whether the physical condition of the land or any building or other structure on the land is causing or is likely to cause environmental harm. “Environmental harm” is given the meaning that it has in section 17(2) of the Regulatory Reform (Scotland) Act 2014, which is:

- (a) harm to the health of human being or other living organism;
- (b) harm to the quality of the environment, including
 - (i) harm to the quality of the environment as a whole,
 - (ii) harm to the quality of air, water or land, and
 - (iii) other impairment of, or interference with, ecosystems;
- (c) offence to the senses of human beings;
- (d) damage to property; or
- (e) impairment of, or interference with, amenities or other legitimate uses of the environment.

This means that Ministers cannot simply look at the nature of the land in isolation – they must look at its impact on surrounding land and the health and senses of people in the community in which it is situated.

5. Agricultural land

Regulation 2(2)(e) obliges Ministers to consider whether the physical condition of the land complies with the standards for good agricultural and environmental condition. The provisions of regulation 2(1) make clear that Ministers must only consider matters so far as applicable, so an urban landowner would not be at risk of a successful Part 3A application simply because they did not take into account of agricultural standards.

Use of the land

6. Use for particular purpose

Regulation 2(3)(a) obliges Ministers to have regard to the purpose for which the land or any building or other structure is being used or has been used, and the length of time for which it has been so used. This may cover a wide range of scenarios, but would make clear, for example, that if a landowner had put the land to a specific purpose, and the land appeared to be either abandoned or neglected as a result of that purpose, Ministers must take this into account. An

example of this may be where land is kept in its natural state deliberately, but is not necessarily classed as a nature reserve under section 15(1) of the National Parks and Access to the Countryside Act 1949 (referred to in more detail below).

7. Lack of use
Regulation 2(3)(b) obliges Ministers to have regard to the length of time for which land has not been used, if it appears to them that the land or any building or other structure on the land is not being used for any particular purpose. This may be relevant, for example, if the land has not been used since it was purchased because the owner is waiting for planning permission.
8. Public recreation
Regulation 2(3)(c) obliges Ministers to consider whether, and to what extent, the land or any building or other structure on the land is being used for public recreation. This may be relevant, for example, where a piece of land has not been built upon or cultivated, but is regularly used by children to play football. It may be that the owner has deliberately not cultivated or built upon that land because he is aware of its use by children and is therefore confident that his land is not a blight to the environment.
9. National or historic interest
Regulations 2(3)(d) and (e) oblige Ministers to consider whether, and to what extent, the land is being held for the purposes of permanent preservation for the benefit of historic or national interest and (i) for the preservation of its natural aspect and features and animal and plant life or (ii) for the preservation of its architectural or historical features so far as of national or historic interest. This may be relevant where buildings or land are not officially classed as “listed buildings”, “nature reserves” or “conservation areas”, but are nonetheless in a certain condition for the purposes of preserving certain aspects of the land for the preservation of national or historic interests.

Designations/classifications

10. Nature and conservation
Regulation 2(4)(a) obliges Ministers to consider whether the land, or any part of the land, is or forms part of a nature reserve or conservation area.
“Conservation area” means a conservation area for the purposes of section 61 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997 and “nature reserve” means a nature reserve for the purposes of section 15(1) of the National Parks and Access to the Countryside Act 1949. The rationale for inclusion of this matter as one to which Ministers must have regard is that it may not be consistent with furthering the achievement of sustainable development to allow for the compulsory purchase of land which is in a certain physical condition for conservation or natural purposes.
11. Contaminated land
Regulation 2(4)(b) obliges Ministers to consider whether the land, or any part of the land, is designated a special site because it is contaminated land. “Special

site” means a special site for the purposes of section 78C(1) of the Environmental Protection Act 1990. The rationale for inclusion of this matter is that contaminated land is already subject to a regulatory regime under the Environmental Protection Act 1990, and therefore any particular requirements on the landowner as a result of the designation of his land as a special site should be taken into account when deciding whether he has abandoned or neglected his land.

12. Listed buildings/scheduled monuments

Regulations 2(4)(c) and (d) oblige Ministers to consider whether any building or structure on the land is a listed building or scheduled monument. “Listed building” means a listed building for the purposes of section 1 of the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997. Scheduled monument” means a scheduled monument for the purposes of section 1 of the Ancient Monuments and Archaeological Areas Act 1979. These matters in case a building appears to be derelict but is actually in that condition because it is of historical or cultural interest.

Ministers may consider other matters not set out in the draft Regulations where these are relevant. The draft Regulations are a list of the matters to which Ministers must have regard as a minimum – in some cases Ministers may have to consider other matters which they deem relevant in order to have satisfied themselves that to approve an application is in the public interest and compatible with furthering the achievement of sustainable development.

220. In the absence of an unambiguous and acceptable definition of abandoned or neglected land produced by the Scottish Government which both removes the barrier that the present proposal is likely to erect, and which avoids the problems of interpretation giving the existing legal concept of abandoned land, then the Committee is likely to ask the Scottish Government to remove the term ‘abandoned or neglected land’ and bring forward a proposal which will allow the widest possible opportunity for community purchase. The Committee reserves the right to take evidence on this issue at stage 2.

It is the Scottish Government’s view that, through a combination of the broad dictionary definition of ‘abandoned’ and ‘neglected’, together with the requirement for Ministers to have regard to the matters set out in regulations made under section 97C(3) of the new Part 3A, the correct balance is struck between the need to provide communities with considerable scope to acquire land which is a barrier to sustainable development, whilst respecting the rights of land owners, giving them certainty as to whether their land is likely to be regarded as “eligible land” for the purposes of Part 3A.

We understand the Committee’s concerns and will actively consider whether we can extend the descriptions of land that the right to buy applies to, beyond neglected and abandoned land, to other land that is causing problems.

234. Notwithstanding the Committee’s recommendation in paragraph 220, with respect to the terms wholly or mainly abandoned or neglected land, which takes precedence, should the Scottish Government wish to retain this provision, the Committee recommends that the Scottish Government bring forward amendments at stage 2 to the following effect—

- **the term “abandoned” is sub-optimal and should be removed entirely, leaving the legislation to relate to “wholly or mainly neglected land;**

Paragraphs 227 and 228 of the Committee’s report highlight concerns from Malcolm Combe and the Historic Houses Association for Scotland about the use of the term “abandoned”. The meaning of abandoned in the context of Part 3A would be its ordinary meaning – not its meaning in Scots property law. The Scottish Government is concerned that to remove the term “abandoned” from the definition of eligible land may be restrictive, as it would exclude land which is a barrier to sustainable development that may not be in a poor physical condition, but may be unused for any purpose whatsoever (see regulation 2(2)(b) of the draft Regulations which obliges Ministers to have regard, if it appears to the Ministers that the land is not being used for any particular purpose, to the length of time for which it has not been so used). The Scottish Government’s intention is to refrain from any potential restriction to the application of the concept of “eligible land”, and therefore it is proposed to retain the reference to “abandoned” land in section 97C(1).

- **the definition of neglected should relate to the sustainable development of the land and not solely to a description of its physical condition and there should be a clear justification for the inclusion of the term;**

The draft Regulations set out a number of matters to which Ministers must have regard that, if agreed, will oblige Ministers to take account of the *effect* of the physical condition of the land, in addition to having regard to what that physical condition is. In particular, Ministers would have to consider whether, and to what extent, the physical condition of the land or any building or other structure on it is (1) detrimental to the amenity of land which is adjacent to it, (2) a risk to public safety and (3) causing or likely to cause environmental harm. The meaning of environmental harm for the purpose of the draft Regulations will be the meaning given to it in section 17(2) of the Regulatory Reform (Scotland) Act 2014, which is:

- harm to the health of human being or other living organism;
- harm to the quality of the environment, including
 - (i) harm to the quality of the environment as a whole,
 - (ii) harm to the quality of air, water or land, and
 - (iii) other impairment of, or interference with, ecosystems;
- offence to the senses of human beings;
- damage to property; or
- impairment of, or interference with, amenities or other legitimate uses of the environment.

Therefore the draft Regulations will oblige Ministers to take account of matters that go beyond a simple assessment of the physical condition of the land.

- **if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure;**

It is intended that the draft Regulations will be laid under the affirmative procedure.

- **owners and communities are entitled to know, prior to the Bill becoming law, what is meant by the separate terms. The Committee considers it is not appropriate to deal with the transfer of fundamental property rights through secondary legislation. The Committee recommends that any definition of terms be set out on the face of the Bill.**

The terms “abandoned” and “neglected” have their ordinary meanings, and therefore the meaning of the terms are not being dealt with in secondary legislation. The draft Regulations set out the matters to which Ministers must have regard when applying those ordinary meanings to specific applications. The draft Regulations have already been made publically available, via the RACCE Committee website, and the Scottish Government is continuing to engage with key stakeholders throughout the process. As mentioned above, the draft Regulations will be laid under the affirmative procedure in order to allow for appropriate scrutiny of the matters to which Ministers must have regard when deciding whether land is eligible.

A benefit to setting out the matters to which Ministers must have regard in secondary legislation is that the Scottish Government will have more flexibility to add to the list of matters in the Regulations as policy in this area evolves, case history accrues and as Ministers analyse the evidence gathered as a result of any use of the Part 3A right to buy.

237. The Committee considers that, whilst there may be a differentiation in urban and rural circumstances and there could be challenges in measuring neglect and abandonment in rural areas, should this provision remain, the Committee is of the view that it should apply uniformly outwith crofting land. However, further consideration to the criteria for determining neglect and abandonment is necessary and should be set out on the face of the Bill.

It is our intention that the provisions will apply uniformly outwith crofting areas, across both urban and rural areas. As previously mentioned, it is expected that the draft Regulations, which outline the prescribed matters which Ministers must take into account when deciding if land is considered to be eligible land, provide enough of a range of factors to ensure that it can be equally applicable in both rural and urban situations. The Scottish Government would welcome any suggestions as to other matters which would be relevant to a decision as to whether both rural and urban land is abandoned or neglected.

239. The Committee shares the concerns of the National Farmers Union of Scotland (NFUS) in relation to the possible impact of the provisions on

agricultural land that may be out of regular use for periods of time. The Committee considers that land which is classified as agricultural land should be exempt from this provision unless it is determined that it fails to meet “good agricultural and environmental condition”. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

It is recognised that effective management of agricultural land may require it to be set aside and out of use for periods of time. Ministers will be obliged by virtue of section 97C(3) and regulation 2(2)(e) of the draft Regulations to consider whether land, where applicable, meets good agricultural and environmental condition before deciding whether the land is abandoned or neglected.

241. The Committee recommends that, should the provision relating to abandoned or neglected remain, the Scottish Government give consideration to the issue of appropriate timescales in which land could be determined to be abandoned and neglected and bring forward amendments to identify timescales in relation to this provision at stage 2.

Each instance of land considered to be abandoned or neglected, whether urban or rural land, must be taken on its merits. The Scottish Government would not wish to be prescriptive and place an arbitrary timescale on this, as the time land has been viewed as being abandoned or neglected will vary, and any timescale must be relevant to the particular land under consideration. The time for which land has been in a particular physical condition, for which it has been used for a particular purpose and for which it has remained unused are matters that are set out in the draft Regulations because it is intended that Ministers must have regard to these timescales when deciding on an application.

244. The Committee considers that the information to be provided as part of the application process should enable Ministers to consider the potential impacts of an application. The Committee is aware of the concerns raised in relation to land owned by an entity in administration or insolvency process and recommends that the Scottish Government reflect on that and consider the need for further regulation or relevant guidance, and if necessary bring forward amendments at stage 2.

Whilst there is nothing on the face of the Bill which explicitly addresses insolvency, the decision as to whether land is wholly or mainly neglected or abandoned under section 97C is one for Ministers, who have discretion to take in relevant factors, and indeed must take certain matters into regard as are set out in the draft Regulations made under section 97C(3). Therefore, it is open to Ministers to take into consideration the fact that the owner is going through an insolvency process when deciding whether the land is abandoned or neglected. Of particular relevance will be regulations (2)(2)(a), (3)(a) and (3)(b) which set out that the length of time that land has been in a certain condition, used for a particular purpose or has remained unused are matters to which the Ministers must have regard. If the time for which land has been in a certain condition, or has remained unused, relates to the

existence of an insolvency procedure then it is expected that Ministers would take this into account.

In addition, section 97H sets out a list of things of which Ministers must be satisfied before they can approve an application. The following criteria are particularly relevant in the case of insolvency:

- s. 97H(b)(i) – *public interest* – the fact that an owner is going through an insolvency process will be something that should be taken into consideration by Ministers when deciding whether consent to the Part 3A application is in the public interest.
- s. 97H(c) – *if the owner of the land were to remain as its owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to land* – if the owner is going through an insolvency process then this is relevant to the consistency of the current ownership with furthering the achievement of sustainable development of land. The continued ownership might be quite likely to be inconsistent given that it is highly likely that the land will be sold, for example if a liquidator has been appointed he will be attempting to sell the owner's assets in order to maximise returns for creditors. Without knowing to whom the land would be sold, it would be difficult for the Ministers to be satisfied that such a sale would be inconsistent with furthering the achievement of sustainable development.
- s. 97H(f) – *owner is not prevented from selling the land or subject to any enforceable personal obligation to sell the land otherwise than to the Part 3A community body*. The existence of an insolvency process is very likely to create enforceable personal obligations, or prevent the owner from selling the land. For example, if a receiver has been appointed, and a floating charge has attached to the land, this has the effect of prohibiting the owner from selling the land.

Section 97N gives Ministers a power to make regulations to either prohibit certain transfers of land taking place or suspend rights, and therefore the content of the Regulations under section 97N are likely to affect how the Part 3A process is to interact with insolvency procedures.

246. The Committee recommends that should the provision relating to abandoned or neglected remain, the Scottish Government provide clarification as to whether the provisions in relation to abandoned or neglected land would apply only to those parts of a land holding that were considered to be wholly or mainly abandoned or neglected or would apply to the whole land holding. The Committee asks that the Scottish Government reflect on this and consider the need for further regulation or guidance to provide clarity on this matter.

The provision relates only to those parts of the land holding that are part of the community body's application. It is the land that is the subject of the application that must be wholly or mainly abandoned or neglected – not a larger holding of land of which the land in the application forms part.

249. The Committee recognises that, in some cases, control over the management of land will lie primarily with the tenant rather than with the landowner. The Committee considers that the Bill as currently drafted does not appear to provide for situations where the owner is not responsible for the absence of activity or for poor management. The Committee recommends that the Scottish Government reflect on this and consider whether relevant amendments are required to clarify this at stage 2.

There are other means by which the owner is able to address issues with their tenant's conduct. It is not the intention that this Bill is used as a vehicle to address tenant/landlord issues .

255. The Committee was concerned about the possibility that land that is under a low intensity/zero management regime for a valid reason (e.g. natural regeneration for biodiversity or natural flood protection) could be considered "wholly or mainly abandoned or neglected" and recognises that in practice there appears to have been a presumption in favour of development rather than public amenity and nature conservation (e.g. at Holmehill).

256. The Committee recommends that, should the definition of abandoned and neglected land remain in the Bill, land which is intended for recognised conservation or environmental purposes be specifically excluded from that definition. The Committee recommends that the Scottish Government bring forward amendments to that effect at stage 2.

Regulation (2)(4)(a) of the draft Regulations sets out that the Minister will be obliged to have regard to whether the land, or any part of the land, is or forms part of a nature reserve or conservation area.

257. The Committee is aware that vacant or derelict land may be contaminated. The Committee believes that it is unlikely that communities will have the skills or resources to deal with such situations and agrees with the Scottish Environment Protection Agency that there is a need for appropriate mechanisms to ensure that communities have access to expert advice and support. The Committee recommends that the Scottish Government addresses these concerns and ensures that appropriate guidance, advice and support is provided to communities.

The Scottish Government already provides help to communities throughout the community right to buy process and officials will ensure that this is continued.

262. The Committee shares the concerns of the Delegated Powers and Law Reform Committee in relation to the new section 97C(3)(a) on eligible abandoned or neglected land, which states "Eligible land does not include land on which there is a building or other structure which is an individual's home unless the building or structure falls within such classes as may be prescribed". The Committee is also concerned that the thinking behind this significant power is in the early stages of development. Given the lack of detail provided in response to its questions on the thinking behind the power the

Committee remains unconvinced of the case for its necessity. The Committee urges the Scottish Government to reconsider the provision that grants Ministers the power to include an individual's home in the definition of eligible land for the purpose of section 97C(3)(a) and recommends that the Scottish Government bring forward amendments at stage 2 to remove this power of prescription.

Ministers intend to bring forward a stage 2 amendment to remove the power for Ministers to make regulations including certain types of home within the definition of eligible land.

265. The Committee asks the Scottish Government to provide further information on the decision to exclude bona vacantia and Crown land from the definition of eligible land. The Committee further recommends that the Scottish Government reflect on this and the potential for amendment at stage 2 to include such land as eligible.

267. The Committee would be interested to know why it is proposed that land which is under the Queen's and Lord Treasurers Remembrancer power of disposal should be treated differently from any other land and asks the Scottish Government to provide further information on the decision to treat land which is under the power of the Queen's and Lord Treasurers Remembrancer differently. The Committee recommends that the Scottish Government reflect on this and, if appropriate, bring forward amendments at stage 2 to remove this power of exception.

The policy behind the new Part 3A being inserted into the Land Reform (Scotland) Act 2003 (by section 48 of the Bill) is to provide a last resort mechanism where an owner of the land is unwilling to sell. The purpose of the QLTR however is to seek to realise, for its value, any land falling to the Crown as bona vacantia or ultimus haeres. Unlike other owners therefore, the QLTR does not seek to retain land - indeed it is not in the QLTR's interest to do so as no disposal income would be generated and they are not resourced to manage such land on an ongoing or long-term basis. The QLTR also seeks to avoid retaining land because of the risks of liabilities arising in relation to it - and it follows from the sources of land falling to the Crown as bona vacantia that it can often be in a poor condition bringing with it the risk of future problems if the Crown interest in it is not resolved.

The QLTR accordingly seeks to resolve the Crown interest in such land by either a disposal, where there is interest in the land, or by a notice of disclaimer (for example where there is no reasonable prospect of a disposal proceeding).

Where the QLTR achieves a disposal, this serves the public interest in the following ways:

- the net surplus generated by the QLTR from dealing with property falling to the Crown as bona vacantia or as ultimus haeres is paid into the Scottish Consolidated Fund, and

- the effect of the disposal should enable land, which may otherwise have been sitting in a derelict condition, to be brought back into beneficial use.

It follows from the QLTR's functions that they are already directed at the mischief being addressed by the Bill, namely seeking to address derelict land which might be a barrier to sustainable development.

The Scottish Ministers already have power to direct the QLTR regarding the exercise and performance of her functions should Ministers consider that to be appropriate – section 2 of the Public Revenue (Scotland) Act 1833 as amended by the Scotland Act 1998 (Schedule 8, paragraph 1).

The QLTR has to operate within the legal framework applying in relation to bona vacantia. In particular, the property of a dissolved company vesting in the Crown as bona vacantia is subject to provisions in the companies legislation which impose time limits within which the QLTR can disclaim property. Consequently, whilst the QLTR will seek a disposal of such land, they have to be able to protect their own (and the Crown's) positions, if appropriate, by resolving the Crown interest within those time limits. The discretion to disclaim ownerless property can potentially be lost after only 12 months (section 1013(4) of the Companies Act 2006). The QLTR's experience is that discussions even for a voluntary disposal can be protracted against that period. There would be obvious timing implications were the last resort mechanism to be applied to bona vacantia.

It is in the nature of this Crown land that the QLTR usually has no prior knowledge of it in advance of an approach to them. Once this land has been raised with the QLTR, the QLTR's experience is that if there is a delay or failure for a disposal to proceed in respect of land it is usually due to the absence of an interested purchaser, inadequate investigation to establish who is the owner of the land, competing interest in the land with potential local sensitivities, the character of the land being such that it should go to some form of community body (such as amenity land) but the only interest is from a private individual rather than a suitable community body, or an unwillingness to pay the professionally assessed value of the land (the QLTR uses the District Valuer). All of those reasons would also potentially arise pursuant to the last resort mechanism in the Bill even if it were to apply to such Crown land.

For the Committees information, if the QLTR were to disclaim property, anyone seeking thereafter to acquire the land might consider the prescriptive claimant provisions in sections 43-5 of the Land Registration etc (Scotland) Act 2012, or where the QLTR has disclaimed under the companies legislation, whether they might seek a vesting order under section 1021 of the 2006 Act.

274. The Committee considers that there should be consistency in the Bill and in subsequent regulation with respect to the definition of an eligible community body for the purposes of all community right-to-buy provisions. The Committee therefore recommends that the Scottish Government bring forward amendments at stage 2 to address the current inconsistency.

Ministers will bring forward amendments at stage 2 to introduce Scottish Charitable Incorporated Organisations (SCIO) and Community Benefit Companies (BenComs) as eligible forms of community body. Ministers also have powers to prescribe via regulations other legal entities which are considered eligible bodies, should that be required at a later date.

276. The Committee notes this apparent omission and recommends that the Scottish Government brings forward amendments at stage 2 to this provision to refer to constitutions as well as to memoranda and articles.

Stage 2 amendments will be brought forward to include constitutions.

279. The Committee questions the necessity for, and the benefit of, the creation of a register of community interests in abandoned or neglected land and recommends that the Scottish Government re-consider the value of this provision and consider the requirement for amendment at stage 2.

Whilst the Scottish Government is creating a new register of community interests, in practical terms, this will utilise the existing register to ensure that it is familiar to users. It is required to store documentation received in respect of applications, to ensure that they are available for public scrutiny, in the interest of transparency.

287. The Committee recognises that there can be very real practical difficulties in identifying land owners and anticipates that the Land Registration (Scotland) Act 2014 will, over time, have a positive effect on the availability and accessibility of information on ownership.

288. However, the Committee remains unconvinced that the provision requiring community bodies to identify ownership, rather than a requiring community bodies to demonstrate they have taken all reasonable steps to identify ownership, is appropriate. The Committee considers that there ought to be a mechanism in this Bill, similar to the existing provisions in the Land Reform (Scotland) 2003 Act, providing for communities to be able to register an interest in land without knowing who the owner is. The Committee recommends that the Scottish Government reconsider its position on this and bring forward amendments to that effect at stage 2.

Land cannot be purchased compulsorily from unknown owners, regardless of how much effort had been undertaken by the Part 3A community body to establish who owned the land, because the mechanism for the transfer under Part 3A is that section 97Q(4)(b) obliges the owner to transfer the land to the Part 3A community body. If the owner refuses to transfer the land then by virtue of section 97Q(6) the Lands Tribunal may authorise its clerk to adjust, execute and deliver title deeds in order to effect the transfer as if it had been done by the owner. For this process to work, the owner has to have been identified.

This differs from Compulsory Purchase provisions where the land owner is unknown. In such situations, title is vested in the purchasing authority, generally the Local Authority, by way of a declaration which is registered in the Land Register, without

the need for a transfer to be effected by the owner. If the land owner is identified at some future date within six years, compensation is payable to the land owner for the loss of their land at that point.

If no owner can be identified, the land in question can be referred to the QLTR, and a community body may be able to acquire the land from them as an alternative option.

291. The Committee considers that all parties should be treated fairly and in this regard recommends that the Scottish Government bring forward the necessary amendments at stage 2 to allow landowners sight of all views submitted and to ensure that the process allows the opportunity for Ministerial consideration of counter views.

It is the Scottish Government's view that an additional counter-representation stage to seek the lands owner's views on the community body's application should not be required as all parties to the application should make full representations at the appropriate opportunity in the knowledge that they have only one opportunity to make representations on the other party's comments.

296. The Committee welcomes the clarification from the Cabinet Secretary that, as the Crichton Down Rules are not statutory, they do not preclude a community having the right-to-buy. The Committee understands that these rules apply only to land bought during the Second World War; however, the Committee would welcome further detail from the Scottish Government on the application of the rules in relation to the land that they do and do not apply to.

More detail about the rules is helpfully set out in "Planning Circular 5/2011: Disposal of Surplus Government Land - The Crichton Down Rules". The Rules apply to all land acquired by any public authority, if it was acquired by or under threat of compulsion or to land acquired under the blight provisions: Part V of Town and Country Planning (Scotland) Act 1997.

Whether or not the land held by the public authority is offered back to the previous owner will depend on a number of factors, so it does not necessarily preclude a community having the right to buy.

297. The Committee also asks the Scottish Government to provide clarification on what it envisages in a situation where there is an approved application but the purpose for which the application was approved is not pursued. The Committee also asks the Scottish Government's view of what would happen in a situation where the community body has bought the land but ceases to exist. If the Scottish Government considers that the previous owner should be offered first right of refusal to buy back the land then the Committee recommends that the Scottish Government reflects on the requirement for the introduction of relevant provisions within the Bill.

Scottish Government officials do not follow up on whether or not land is used for the purpose for which it was acquired. It is generally the funders who impose conditions

on the provision of funding, therefore it would be the funders who may seek to recover monies where land was not used for the purpose for which it was acquired. The disposal of assets when a community body ceases to exist is covered under the rules for whichever type of body it is. For example, a SCIO which is dissolved must confirm to OSCR that any surplus assets have been passed to the body (or bodies) named in the resolution of the SCIO's members. The Scottish Government has no plans to introduce any further obligations.

301. The Committee agrees with those stakeholders who consider that the mapping requirements for community right-to-buy are excessive and strongly believes that there is a need to streamline the mapping process, simplify the information requirements and align the eligibility criteria with those for Parts 2 and 3A of the amended Act. The Committee recommends that the Scottish Government bring forward amendments to this effect at stage 2.

The Scottish Government agrees with the Committee that there is a need to streamline the mapping process, and therefore intends to bring forward amendments at Stage 2 to amend the mapping requirements.

307. Notwithstanding the points made by the Cabinet Secretary, the Committee is concerned that the Bill as currently drafted appears to suggest that the onus will be on the applicant, rather than on the owner, to show that the current ownership would be inconsistent with sustainable development.

308. The Committee considers that this additional provision is unnecessary because the community would have to demonstrate, in its application, that the purchase furthered the achievement of sustainable development. The Committee recommends that the Scottish Government bring forward amendments at stage 2 to delete the provision that currently states that, should the ownership of the land to remain with its current owner, that ownership would be inconsistent with furthering the achievement of sustainable development in relation to the land.

Section 97G(6) of the new Part 3A sets out the matters which must be specified in the application by the Part 3A community body. These matters are:

- the reasons why the Part 3A community body considers that its proposals for the land are in the public interest and compatible with further the achievement of sustainable development in relation to the land;
- the reasons why the Part 3A community body considers that the land is wholly or mainly abandoned or neglected;
- the location and boundaries of the land in the application;
- certain information about rights and interest in the land;
- the proposed use, development and management of the land and how it would affect any facilities on the land such as sewers or pipes.

Section 97G(6) does not state that the Part 3A community must demonstrate in its application that, if the land were to remain with its current owner, that ownership would be inconsistent with further the achievement of sustainable development in relation to the land. This is a matter of which Ministers must satisfy themselves

under section 97H(c), rather than something which the Part 3A community body to demonstrate.

Of course, it is open to the Part 3A community body to demonstrate, in their application, that it is in the public interest for the application to be approved because the current ownership would not be consistent with the sustainable development of the land. Equally, it would be open for the landowner to make representations to the effect that his continued ownership would be consistent with the sustainable development of the land.

The Scottish Government will consider whether or not alternative wording would be preferable to avoid any confusion. However, in essence, the purpose of section 97H(c) is to ensure that the application is not approved in cases where the current owner has demonstrated that his continued ownership of the land would further the achievement of sustainable development of the land, because if this is the case, then the policy objectives of the Bill will already have been met.

310. The Committee recommends that the Scottish Government provide guidance for communities setting out the basis of the required evidence to prove that a community had tried and failed to purchase the land.

If the provisions are passed the Scottish Government will ensure that the guidance is updated to include this.

315. The Committee recognises that it may be helpful for communities to have information on the valuation at the time of the ballot and that such information may inform their views. The Committee recommends the Scottish Government give further consideration to this prior to stage 2 and consider the possible benefit of amendments to that effect.

The appointment of an independent valuer is carried out within 7 days of approving an application. They then have 8 weeks to provide a valuation. The ballot must have taken place before the application is submitted so it is not possible for this valuation to be in place at the time. However, it is expected that there will be an indication of costs, obtained by the community body, as part of the ballot information even if this is not the final valuation used for the purchase itself.

318. The Committee is concerned that communities should have equivalent access to the right-to-buy provisions of part 2 and part 3 and agrees with the view of stakeholders who suggested that the independent balloter should be appointed and paid for by Scottish Ministers. The Committee recommends that the Scottish Government bring forward amendments to this effect at stage 2.

For both Parts 3 and 3A, the ballot is the first indication of community support which is different from applications under Part 2 where community support has already been demonstrated at the time of registration of the interest and prior to the ballot taking place. The Scottish Government does not intend to automatically pay ballot costs in all cases, but the intention is that it could reimburse the cost of the ballot in certain circumstances, for example, where a ballot indicated community support.

The Scottish Government intends to introduce amendments at Stage 2, applicable to Part 3 and Part 3A, to include powers for the Minister to make regulations setting out the circumstances in which a crofting/Part 3A community body will be able to apply to the Ministers to have the cost of the ballot reimbursed.

320. The Committee understands the concerns of stakeholders with respect to the edited register and the initial 50% threshold, however, the Committee considers that this needs to be balanced against the provision which could deprive an owner of their asset. Given the significance of this provision, the Committee considers that the proposed threshold is appropriate. However, the Committee recommends that the Scottish Government keeps this under review.

The Bill as introduced amends section 51 of the Land Reform (Scotland) Act 2003 to remove the 50% threshold and require that the proportion of the community who voted is sufficient to justify the community body's proceeding to buy the land. The requirement for the majority of those who voted to have voted in favour of the acquisition remains.

Part 3A of the Act (section 97J(1)(b)) provides that, for the purposes of the ballot in relation to a Part 3A application, either (i) at least half of the members of the community must have voted or (ii) fewer than half of the members of the community have voted but the proportion which voted is sufficient to justify the Part 3A/ community body's proceeding to buy the land.

323. The Committee considers that Ministers should have the discretion to determine which application should proceed and recommends that the criteria to be considered in coming to a decision should be set out in regulations.

Section 97K gives Ministers the discretion to decide which application is to proceed in circumstances where more than one Part 3A community body has applied under Part 3A to buy the land, and it is considered that putting the criteria into regulations would remove the element of flexibility. In relation to Parts 2 and 3 (sections 55 and 76) Ministers also have discretion to decide which community body may proceed with the application. In reaching a decision, cases would be considered against each other with regards to public interest, feasibility, cost and any other relevant factors, and Ministers are obliged to have regard to all views on each of the applications and the responses to those views which they have received in answer to invitations to comment on the applications.

326. The Committee understands the concerns of the National Trust for Scotland. However, the Committee is of the view that there could be many and varied conditions that could apply to each consented application and that each application and the relevant conditions should be considered on a case by case basis. In that regard, the Committee is not persuaded of the need to specify the range of possible conditions on the face of the Bill or by way of a definitive list in subsequent regulation and considers that this is rightly a matter for Ministerial discretion.

328. The Committee would welcome further information from the Scottish Government on the circumstances under which Ministers envisage suspending rights over land in respect of which a Part 3A application had been made.

Regulations under section 97N would be used to prevent an owner circumventing the Act by transferring the land in question before the process is complete. As a result, the Scottish Government intends to place a prohibition on transfers, except for those considered to be exempt, from the point at which Ministers approve the application. This is in line with the current Part 3 of the Act.

331. The Committee would welcome further information from the Scottish Government on what is envisaged in terms of burdens and claw-back provisions should the plans of a community body not be implemented. The Committee would also welcome further information on whether the Scottish Government has considered applying a time requirement for implementation of community bodies' plans and how this would work in practice.

Then Scottish Government has no plans to introduce any form of intervention should community body plans not be implemented, nor any timescale. It is generally the funders who impose conditions on the provision of funding, therefore it would be the funders who may seek to recover monies where land was not used for the purpose for which it was acquired.

337. The Committee considers that the valuation procedure should ensure that both parties are 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. The Committee recommends that the Scottish Government bring forward amendments at stage 2 to provide both the owner and the community body the right to comment on the valuation and other party's representations.

The Scottish Government intends to bring forward amendments at Stage 2 to introduce a counter-representation stage in the valuation process. The land owner will be invited to make counter-representations on the community body's representations and vice-versa in order for the valuer to reach an informed valuation for the land.

338. The Committee agrees with the Big Lottery Fund's suggestion that it would be useful, for a number of reasons, for the community body to have the valuation early and recommends that the Scottish Government reflect on this and the merit of amending the Bill to this effect at stage 2.

The appointment of an independent valuer is carried out within 7 days of approving an application. They then have 8 weeks to provide a valuation. The ballot must have taken place before the application is submitted so it is not possible for this valuation to be in place at the time. However, it is expected that there would be an

indication of costs, obtained by the community body, as part of the ballot information even if this is not the final valuation used for the purchase itself.

342. The Committee concurs with the view of the Development Trusts Association Scotland that the right of compensation should be limited to situations where the application is approved, and recommends that the Scottish Government bring forward amendments at stage 2 to clarify the provision in this respect.

It is not felt fair that, where a community application has failed, the owner, through having to comply with the Act, is out of pocket. In fact, by putting their own case forward convincingly, they can be impacting on their own case for compensation. As a result, there is no intention to bring forward amendments at stage 2 in relation to compensation in this regard.

343. The Committee shares the concerns of the Community Land Advisory Service in relation to owners' tax liabilities and the timing of the sale and agrees that the community should not bear this cost. The Committee recommends that the Scottish Government reflect on this and clarify the appropriate source of compensation for this deprivation by way of amendment at stage 2.

The owner should be compensated for any financial costs incurred in complying with the Act. Since it is the community body that has purchased the land, it is they who should pay compensation. In given circumstances, Ministers are empowered to make a grant towards the community body's liability for compensation. To apply successfully for such a grant, the community body need to demonstrate that:

- after they have made payment of outstanding costs incurred by the purchase of the croft land, they have insufficient funds to pay the compensation required;
- they have already taken all reasonable steps to try and raise the compensation amount required; and
- it is in the public interest that Ministers pay the grant.

In relation to the crofting community right to buy, the process for applying for a grant towards compensation costs is set out in the Crofting Community Right to Buy (Grant Towards Compensation Liability) (Scotland) Regulations 2004. The equivalent provisions for the Part 3A right to buy are set out in section 97U, and it is intended that Ministers will prescribe the form and the procedure for the process by way of regulations made under section 97U(6).

347. The Committee has no specific comment to make in relation to appeals. However, the Committee considers that a process of mediation should have been built into the Bill to ensure that effective discussion between a landowner and a community is facilitated. The Committee considers that Ministers should have the powers to facilitate negotiation, and where necessary appoint, and provide financial resources to support, a mediator. The Committee recommends that the Scottish Government give consideration to an

appropriate mediation process and include provision for this within the Bill by way of bringing forward amendments at stage 2.

The Scottish Government does not plan to introduce any form of mediation into the Bill. However, it could well be a function of the dedicated resource for community land ownership that was announced in the Programme for Government, such as a Community Land Agency. If a mediation role were to be placed within the Land Reform Act, any mediation could only refer to Community Right to Buy case, rather than any wider situations that might benefit from the same approach. There will be a short life working group set up as part of the 1 million acre target work that will look into this.

Other issues considered by the Committee

350. The Committee was interested to hear the views of stakeholders in relation to land use and the right to manage land and recommends that the Scottish Government consider the scope to include provisions in relation to management rights in this Bill by way of amendment at stage 2 and/or in the forthcoming land reform legislation.

Where public sector land is concerned, leasing, management or use are provided for in addition to ownership under the asset transfer provisions in Part 5 of the Bill. In relation to privately owned land, a range of options is being considered in relation to the forthcoming Land Reform Bill.

357. The Committee recommends that the Scottish Government give consideration to what more can be done to address the issue of best value, best public benefit and, the approach taken by local authorities and other public sector bodies. The Committee recommends that the Scottish Government identify further measures to address this issue, through a review of the public finance manual, by the inclusion of related provisions within the proposed land reform bill and by the provision of further guidance to local authorities in relation to their assets, their considerations of best value, and supporting communities to acquire land.

Local authorities have powers to dispose of assets at less than best consideration under the Disposal of Land by Local Authorities (Scotland) Regulations 2010, where they are satisfied that the disposal will contribute to the promotion or improvement of economic development or regeneration, health, social well-being or environmental well-being. The Scottish Public Finance Manual has also been amended to highlight the need for other public bodies to consider similar benefits, stating:

“Where there are wider public benefits, consistent with the principles of Best Value, to be gained from a transaction, disposing bodies should consider disposal of assets at less than Market Value. This includes supporting the acquisition of assets by community bodies, where appropriate”.

The Community Ownership Support Service and Association of Chief Estates Surveyors produced guidance in August 2013, “Asset Transfer From Policy to

Practice”, which gives advice on evaluating benefits and discounts, and we will consider providing further guidance on these issues as the Bill is implemented.

358. The Committee also recommends that the Scottish Government give consideration to an appropriate mechanism, such as the proposed land commission, to adjudicate in cases where there are suggestions that local authorities may be seeking to frustrate local communities. The Committee asks the Cabinet Secretary to reflect on this issue and consider what further amendments could be brought forward at stage 2 to address the issue of best value, best public benefit and the practical impact of the approach taken by local authorities and other public sector bodies.

There is no intention to bring amendments to the Bill on this at stage 2. As part the paper “A Consultation on the Future of Land Reform in Scotland”, Proposal 1 asks about a potential Scottish Land Reform Commission and the structure and remit of such a body. The issues raised by the Committee could be dealt with by this body, if that were deemed appropriate.

366. The Committee recognises the difficulties faced by communities in seeking to exercise their right-to-buy and is keen to ensure that appropriate support and funding is available to all communities across Scotland to facilitate meeting their aspirations. The Committee agrees that public sector bodies have an important role in that regard.

367. The Committee is familiar with the role of Highlands and Islands Enterprise in supporting communities to acquire land to date and requests further information on the role that the Scottish Government envisages for Highlands and Islands Enterprise and for Scottish Enterprise in taking the land reform agenda forward. The Committee also asks for the Scottish Government’s view on how best to take forward the social remit outwith the Highlands and Islands.

As part of the work associated with the 1 million acre target, the functions and remit of HIE is actively being looked at, as well as options for other bodies that might take this forward outwith the HIE area.

368. The Committee welcomes the Scottish Government’s commitment to establish a community land unit to provide support and advice to communities. The Committee seeks information on how the Scottish Government anticipates the new community land unit will utilise the expertise and interact with the existing unit within Highlands and Islands Enterprise.

369. The Committee also requests that further information be provided on the remit and resourcing of the unit; the timescale for its establishment; the location of the unit; the ways in which the unit will work with, and practically support, communities at a local level; and how the work of the unit will be monitored and evaluated.

As part of the work associated with the 1 million acre target, the functions and remit of the dedicated resource announced is under development, and details will be released when they have been clarified further.

370. The Committee welcomes confirmation that fresh guidance which takes a more relaxed view of state aid issues has been issued and recommends that the Scottish Government actively promote this guidance to local authorities across Scotland.

The Scottish Government will ensure that the new guidance is promoted accordingly.

372. Having considered the Bill, it does not appear to the Committee that there is any restriction on communities seeking to use the provisions within Part 3 and Part 3A of the 2003 Act, and the part 5 provisions of the Bill; however, the Committee would welcome clarification from the Scottish Government that this is indeed the case. The Committee would also welcome further information from the Scottish Government on the decision-making process where Scottish Ministers or Scottish Government agencies are the landowner.

Communities are quite able to lodge applications under several parts of the 2003 Act, and under part 5 of this Bill. The decision making process would remain the same where the SG were the landowner. It is subject to appeal, should community groups feel that their application has not been assessed fairly, so there is a degree of scrutiny of decisions in these matters.

ISSUES NOT INCLUDED IN THE BILL

Crofting Community Right to Buy (Part 3)

375. The Committee considers that it would have been preferable had consultation on the crofting community right-to-buy been undertaken alongside consultation on the existing part 4 provisions and that the amendments to the crofting community right-to-buy had been included in the Bill as introduced, rather than at stage 2. The Committee considers that the introduction of significant new provisions by way of amendments at stage 2 is undesirable in terms of effective parliamentary scrutiny, as the time available at stage 2 to consider new evidence is limited. The Committee would welcome the opportunity of early sight of the proposed Scottish Government draft amendments.

The Scottish Government issued a call for evidence about its proposals as well as a series of face to face meetings with stakeholders across the crofting spectrum. There was broad agreement amongst stakeholders for the proposals. Scottish Government amendments have been lodged in order to provide early sight of proposals to allow the Committee to consider them as part of their stage 2 deliberations.