Written submission from Holmehill Community Buyout

Thank you for the opportunity to contribute to the dialogue during the consideration of the Land Reform (Scotland) Bill. This is an important piece of legislation which should, if it is developed fully, contribute to the ability of communities throughout Scotland to take better control of their land and environment.

I am writing this as the Chair of the Holmehill Community Buy-out group. Full details of our organisation, its aims and experiences are on www.holmehillblog.org and www.holmehill.org. These comments are based on our experiences which, as one commenter observed, are considerable, as we are probably the longest established buy-out group still functioning, but who have not secured their land ownership goals. The last ten years have been frustrating and hard work, requiring tenacity in the face of the “system”, but we have survived and intend to continue, until we secure our goals.

These comments focus on one section: Section 47 Minister’ decision on application. We do not have the technical capability to make detailed comments on the legal wording of the Bill, but in this particular area we are seeking to demonstrate the likely impact of the detailed wording of Section 47 on this Community Group. It is our hope that our comments will contribute to securing the laudable objectives of the Bill, making it more effective and changing the balance of power in communities in favour of local people.

Section 47

The crux of the issue is in Section 47 Right to buy: Minister’s decision on application.

This is the key Section in respect to our interest in the Land Reform Bill. It is the Section whereby we might have hoped to be able to move forward to purchase Holmehill. We consider that these comments could and will apply to many potential instances, particularly in more urban areas.

The wording in 47(2) is the really critical issue. As set out it appears that all six conditions have met.

Section 47 (2) (a)

How is “sustainable development” assessed? There are both environmental and financial considerations. In the case of Holmehill we expect to satisfy both conditions, but what about a community seeking to buy for example their last shop or licensed premises that the owner is closing and selling for conversion to residential use? Clearly there is no environmental case. There may be a case to help the general social sustainability of the community and there will need to be a sustainable economic model, which may be different to that of the owner – a co-operative, charity or volunteer led community group.

So this is somewhat open-ended and there is likely to be a requirement to provide guidance to aid communities faced with such challenges.
Section 47 (2)(b)

In general this should be axiomatic, because if it was not, the process is unlikely to have got to this stage, but it needs to remain as a key requirement.

Section 47 (2)(c)(i)

The inclusion of “significant” is critical here. The dictionary definition of “significant” covers a number of uses the more relevant being “is noteworthy, of considerable amount or effect or importance, not insignificant or negligible”. This implies that the benefits derived from the transfer of the land will need to deliver quite a large, positive impact for or on the community. I would argue that in many cases whilst there are positive benefits arising to the community they are unlikely to pass a test of “significance” given the materiality of many of the potential opportunities in relation to the size of the community. Moreover even if the circumstances would pass the “significance” test it gives the opportunity of the owner, who is likely to be hostile to the transfer, an opportunity to challenge the process, with all the cost, stress, uncertainty and trauma such a challenge would bring to a volunteer run community organisation.

Section 47 (2)(d)

This requirement is the “killer one”. We do not see many circumstances where the non-transfer of the land “is likely to result in (significant) harm to that community”. That is setting aside the use of the word significant. The, hopefully rare, avoidance of harm to a community is adequately covered by 47(2)(c), in that the avoidance of harm is clearly a benefit. So this requirement seems unnecessary and draconian.

So as presented 47(2)(d) is likely to result in a failure to meet at least one condition. The use of the word “significant” in 47 (2) (c) (i) will make that a very difficult condition to achieve. In our experience these decision criteria will make it almost impossible to achieve approval for a “Right to Buy” in most circumstances.

To render this Section useable we suggest that 47 (2)(d) is completely deleted and that 47(2)(c)(i) is revised as follows: “...is likely to result in benefit to the relevant community or that not granting consent to the transfer of the land is likely to result in harm to that community (see subsection (9)) to which the application relates, and...”

If the Bill passes onto the statute book as currently written it is unlikely that Holmehill will be seeking to use it to achieve our objectives. We hope that you will address these issues so that we can secure Holmehill for the community and then develop it into the valuable and accessible community resource that the community desire, rather than its remaining as semi-derelict woodland.

Should you wish to discuss these observations further I would be willing to discuss further and meet with officials or Ministers to explain our concerns.