COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Explanatory Notes

Introduction

These notes have been prepared by the Scottish Government in order to assist the reader of the amendments and to help inform debate on them. They have not been endorsed by the Parliament. The notes should be read in conjunction with the amendments and the sections of the Land Reform (Scotland) Act 2003 which they propose to amend.

Policy aim of Part 4 amendments

The attached proposed amendments amend the Crofting Community Right to Buy provided for in Part 3 of the Land Reform (Scotland) Act 2003.

The proposed amendments are intended to provide greater flexibility for community bodies and streamline the crofting community right to buy process in line with feedback received from stakeholder groups.

Background

It is over 10 years since the introduction of the Crofting Community Right to Buy provided for in the Land Reform (Scotland) Act in 2003 ("2003 Act").

During these 10 years, the Scottish Government have observed how the provisions have worked in practice and, with stakeholders’ assistance, have identified ways in which they can be improved. A range of proposed amendments are summarised below. The purpose of the proposed amendments is to make the Crofting Community Right to Buy easier for crofting communities to use, while at the same time continuing to strike a fair balance between the rights of landowners and crofting communities.

A Call for Evidence, published on 13/10/2014, sought views from key stakeholders on these proposed amendments. This was followed by a number of face-to-face meetings with key stakeholders which took place in Edinburgh, Inverness, Isle of Harris and Kyle of Lochalsh during December 2014.

The Call for Evidence can be viewed at:


1 Amendments available here:

2 Amendments available here:
SPECIFIC AMENDMENTS – PART 4 OF COMMUNITY EMPOWERMENT BILL

Sections 71 and 72 - Legal structure of community body

The proposed amendments will broaden the range of legal organisations that can be a crofting community body (CCB). This is to include Scottish Charitable Incorporated Organisations (SCIOs) and Community Benefit Companies (BenComs) that meet certain requirements. Currently a CCB must be a company limited by guarantee that meets certain requirements.

This proposed amendment will provide greater flexibility for community bodies to adopt a legal entity which best suits their circumstances.

This proposed amendment will also bring Part 3 into alignment with proposed amendments to Part 2 (community right to buy) and Part 3A (the proposed new right to buy abandoned or neglected land without a willing seller) of the 2003 Act.

In addition, the proposed amendment will insert a section 71(A1)(b) which will give Ministers a regulation-making power to provide for different types of bodies to be eligible crofting community bodies.

Section 71 - Removal of provision for auditing of accounts

The proposed amendments remove the requirement that a company limited by guarantee can only be a CCB if its articles of association include provision for the auditing of accounts. Such a company will still be required to make proper arrangements for its financial management.

The reason for this proposed amendment is that it has been indicated by some community bodies that they believe they are required to have formal audits of accounts prepared in order to comply with the 2003 Act, which is not the case.

Section 71 - Amend definition of ‘crofting community’

The proposed amendments would amend the definition of a ‘crofting community’ in section 71(5) to capture more crofters who are excluded by the existing legislation. It is recognised that the existing definition of a crofting community may cause difficulties in a number of ways and may not include all those who would consider themselves to be members of the crofting community.

The proposed amendment includes owner-occupier crofters who are registered on Registers of Scotland’s Crofting Register within the definition of the crofting community, but does not include those on the Crofting Commission’s Register of Crofts at this point in time. The proposed amendment gives Ministers a regulation-making power to expand the definition of crofting community at a later date. Such expansion could include owner-occupier crofters who are registered in the Register of Crofts.
Section 73 - Croft land mapping

The proposed amendments simplify the mapping information that a CCB is required to provide about the land that it wishes to purchase. The existing mapping requirements are recognised as being particularly complex as a CCB is required to map areas including all sewers, pipes, lines, watercourses etc. In addition to the map, the CCB is also required to provide a written account of all such features on the land, and their locations.

The proposed amendment will simplify mapping requirements to a more reasonable level than current requirements, because it has been evident during stakeholder consultation that the current requirements are considered to be particularly complex. The required information to be on the application form will still be set out in Ministerial regulations, but these regulations are no longer obliged to specify that all rights and interests in the subjects of the application are identified – instead they must specify that all rights and interests in the subjects of the application that are known to the community body are specified. In addition the requirement that the required information must include sewers, pipes, lines, watercourses or other conduits and fences, dykes, ditches or other boundaries in or on the land will be removed.

Section 73 - Public notice of application

The proposed amendments will amend the way in which Ministers are required to give public notice of an application. Current provisions require Scottish Ministers to publish a public notice advertising the crofting community body’s right to buy application under Part 3 of the 2003 Act. The 2003 Act requires the advertisement to be placed in a newspaper circulating in the area where the land or interests the crofting community body wishes to acquire are located, and in the Edinburgh Gazette.

The intention is that Ministers should still be required to give public notice, by advertisement, of an application by a crofting community body under Part 3 of the Act. The proposed amendments provide that the form of the advertisement be set out in regulations made by Ministers.

This proposed amendment provides greater flexibility and allows more appropriate forms of advertisement to be used according to the individual circumstances of the case. It might be the case that advertising in the local church or village hall will reach a wider community audience than an advert placed in a newspaper circulating in the local area.

Sections 74(1) and 97B - Identification of owner, tenants and certain creditors

The proposed amendments add to the conditions set out in section 74(1) of the Act to provide that, in order to consent to an application under Part 3, Ministers must be satisfied that the owner, tenant, person entitled to sporting interests, or creditor in a standard security in relation to that land or interests, are correctly identified in the application submitted by the crofting community body.
This proposed amendment will ensure that all relevant parties to the application are correctly identified in order for the application to proceed. This will also ensure that all parties to the application are fully involved in the process and will be given the opportunity to comment on the application. This will ensure that Ministers will have received all available evidence on which to make a decision on the crofting community right to buy application.

Section 75 - Ballot procedure

(1) A ballot of the crofting community must be undertaken by the crofting community body in order to indicate where or not there is community support for the proposal to buy the land to be purchased under Part 3. Ministers already have power to make regulations setting out how the ballot is to be conducted.

The proposed amendments inserts a specific power for Ministers to make regulations setting out the information that the crofting community body is required to provide to Ministers about the ballot, or any consultation that the crofting community body may have held with the community about their application.

(2) The crofting community body are already responsible for paying for the cost of the ballot. The proposed amendment expressly states that the crofting community body is liable for meeting the expense of conducting the ballot.

(3) The proposed amendments also insert a power for Ministers to make regulations setting out circumstances in which the CCB may apply to Ministers to recover the cost of conducting the ballot.

The proposed amendments provide clarity and confirm that it is the crofting community body who is liable for the cost of the ballot, and that the CCB may, in certain circumstances, seek reimbursement of the cost of conducting the ballot.

The proposed amendments also give Ministers flexibility to request additional information in connection with the ballot, if Ministers feel that additional information would be helpful in the decision-making process.

Section 76 - Right to buy exercisable by only one crofting community body

When more than one CCB applies to purchase the same land, Ministers must decide which application is to proceed and the other applications are extinguished.

If an application is extinguished Ministers have to notify the owner of the land, person entitled to the sporting interests or tenant, as the case may be, and the CCB of this.

The proposed amendments provide that Ministers should also be required to notify each person who was invited to give views on the applications that have been extinguished.

This will ensure that all parties to the applications who were invited to comment on the applications are notified when an application is extinguished.
Section 81 - Reference to Land Court

Currently, the 2003 Act lists certain persons who have a right to refer a question to the Land Court at any time before Ministers reach a decision on an application.

The proposed amendment extends the list of certain persons who have a right to refer a question to the Land Court before Ministers reach a decision on an application.

The proposed amendment will ensure that all parties to an application have the right to refer a question to the Land Court.

Section 88 - Valuation

(1) In carrying out the valuation of land to be purchased by the CCB the valuer is required to invite the land owner, person entitled to the sporting interests in the land, or tenant as the case may be, and the CCB to make representations as to the value of the land.

Where such representations are made the proposed amendments provide that there should be an opportunity to make counter-representations.

(2) The proposed amendments provide that the timescale for valuation of the land to be purchased is increased from 6 weeks to 8 weeks (this can still be extended by Ministers) to provide the valuer with more time to complete the valuation and carry out the counter-representation step.

This will ensure that the valuer takes account of all parties’ views to the application, is furnished with all information relevant to the valuation, and has adequate time to complete the valuation process.

Section 89 - Compensation

The proposed amendments extend the power for Ministers to make an order about the compensation payable by a CCB in relation to an application to purchase land. Compensation is payable to those who have incurred loss or expense in connection with the crofting community right to buy application to recover the amount of that loss by way of compensation.

This will enable Ministers to make further provision, should it be considered appropriate, about the compensation payable.

The proposed amendment will enable Ministers to make further regulations, should they be required, to ensure those who have incurred loss or expense in connection with the crofting community right to buy application are properly compensated for the loss or expense.

Section 92 - Outcome of appeal to Land Court

Where there is an appeal to the Land Court in respect of the valuation, the Land Court is required to give their reasons in writing within 4 weeks of the hearing date. The proposed amendments change the 4 week time limit to 8 weeks.
In addition, the proposed amendments provide that, should the Land Court be unable to meet the 8 week time limit, the Land Court is to notify all parties of the date on which the Court will provide a written decision.

This proposed amendment eases the burden on the Land Court and gives the Land Court more flexibility when scheduling its caseload. In providing a date on which the Land Court will report should it be unable to report within 8 weeks, this will provide assurance to all parties of when the decision will be received.