



The Scottish Parliament
Pàrlamaid na h-Alba

Rural Affairs, Climate Change and Environment Committee

Report on Part 4 of the Community Empowerment (Scotland) Bill

The Committee reports to the Local Government and Regeneration Committee as follows—

EXECUTIVE SUMMARY

- 1. The Rural Affairs, Climate Change and Environment Committee considered Part 4 of the Community Empowerment (Scotland) Bill and reports to the lead committee as follows.**
- 2. The Committee considers that a Bill is required to remedy the defects of the Land Reform (Scotland) 2003 Act and achieve the aim of extending the community right-to-buy. The Committee recognises that land reform is an on-going and complex process and the Part 4 provisions of the Bill address some of the issues of the land reform agenda. The Committee considers that these provisions could have been incorporated within the forthcoming land reform legislation but recognises the desire of many stakeholders and of the Scottish Government to resolve the identified shortcomings in the Land Reform (Scotland) 2003 Act speedily and, on that basis, the Committee is content that the Part 4 provisions have been included in the Community Empowerment (Scotland) Bill.**
- 3. The Committee is aware of the concerns of many stakeholders in relation to the drafting of the Bill and in relation to what is included and what is to be left to further regulation and guidance. The Committee shares some of those concerns and comments on this in further detail within the report.**
- 4. The Committee is concerned about the level of detail provided in the Policy Memorandum and in the Financial Memorandum. 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. The Policy Memorandum could also have provided further consideration of sustainable development and human rights could have been brought into the wider context of the Bill which may have assisted, and might still assist, in establishing an environment which would facilitate a more constructive dialogue between landowners and communities.**

5. Whilst the Committee understands that community right-to-buy will be demand-led, the costs for communities and landowners and the costs to public bodies of providing support to communities are unclear and the Committee is of the view that the Financial Memorandum ought to have given greater consideration to this. 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 costs to communities and landowners and the indirect costs to public bodies and keep the funding requirements under review.

6. The Committee recognises the overwhelming support of stakeholders to extending the community right-to-buy to the whole of Scotland. The Committee considers that parity of opportunity should be available to all communities and welcomes the provisions in section 27 of the Bill extending the community right-to-buy Scotland wide.

7. 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 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.

8. The Committee heard evidence suggesting that the definition of community should include communities of interest as well as those of geographic place. The Committee is also aware of the dispersed nature of some rural communities, and of many communities of interest within those areas. The Committee had some sympathy with those who sought to include communities of interest in the Bill, however agrees with the Cabinet Secretary on the importance of communities maintaining a sense of place, and being rooted in place.

9. The Committee was interested to hear the views of stakeholders on the requirement on communities to register an interest in land. The Committee understands that many communities only start to take an interest in land acquisition when land comes on the market and many stakeholders support the removal of the registration requirement. On balance, the Committee considers that there are benefits in encouraging communities to pro-actively engage in community development and, where possible, to identify the assets they may need to deliver their objectives. The Committee is also concerned that there can be difficulties in supporting community bodies at short notice. On that basis the Committee is, in principle, supportive of the requirement to register an interest in land.

10. However, the Committee considers that the Scottish Government should take account of 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.

11. Notwithstanding that, the Committee considers that the registration process requires considerable simplification. The Committee recommends that the Scottish Government give consideration to a simplified registration process that would also include the option to register 'a purpose'.

12. The Committee is aware 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. 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.

13. The Committee recommends that the re-registration process should also be simplified and there should be a presumption in favour of re-registration unless there has been a material change of circumstance. Whilst the Committee has some sympathy with those stakeholders who proposed an extension of the re-registration period from five to ten years, the Committee considers that circumstances can change over time and, if the re-registration process is substantially simplified, a requirement to re-register every five years is appropriate.

14. 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.

15. 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.

16. 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.

17. 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.¹

18. In the absence of an unambiguous and acceptable definition² 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.

19. 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;
- 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;
- if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure; and
- 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.

20. The Committee considers that 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 considers that it should apply uniformly outwith crofting land. However, further consideration to the criteria for determining neglect or abandonment is necessary and should be set out on the face of the Bill. 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 is also

¹ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 14 to 17.

² Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 18 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.

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'. The Committee considers that land which is intended for recognised conservation or environmental purposes should be exempt from the provision.

21. The Committee shares the concerns of the Delegated Powers and Law Reform Committee in relation to the power of prescription, which would allow land on which there is a building or other structure which is an individual's home, to be considered as eligible land. The Committee is unconvinced of the case for including this power and urges the Scottish Government to reconsider the provision and remove the power of prescription.

22. The Committee recognises that there can be very real practical difficulties in identifying land owners and 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.

23. 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.

24. The Committee considers that the provision requiring proof that if ownership of land remains with its current owner it would be inconsistent with furthering the achievement of sustainable development in relation to the land is unnecessary, because, in its application the community would have to demonstrate that the community purchase furthered the achievement of sustainable development.

25. The Committee also considered best value, best public benefit, and the approach taken by local authorities and other public sector bodies. The Committee asks the Cabinet Secretary to reflect on this issue and consider what further guidance and amendment is required to address the concerns.

26. 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 considers that public sector bodies have an important role in that regard and welcomes the Scottish Government's commitment to establish a community land unit to provide support and advice to communities.

27. The Committee understands that the Scottish Government intends to bring forward amendments at stage 2 to include provision for crofting community right-to-buy. 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 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.

INTRODUCTION

Parliamentary scrutiny

28. The Community Empowerment (Scotland) Bill³ was introduced in the Scottish Parliament on 11 June 2014. The Bill was accompanied by Explanatory Notes⁴, which include a Financial Memorandum, and by a Policy Memorandum⁵, as required by the Parliament's *Standing Orders*.⁶

29. Under Rule 9.6 of *Standing Orders*, on 18 June 2014 the Parliamentary Bureau referred the Bill to the Local Government and Regeneration Committee as lead committee, to consider and report on the general principles.

30. On 21 August 2014, Joe FitzPatrick MSP, Minister for Parliamentary Business wrote to the Conveners of the Rural Affairs, Climate Change and Environment (RACCE) Committee and the Local Government and Regeneration (LGR) Committee. The letter stated that following discussions with the Conveners of those Committees—

“[the Government is now keen to improve the crofting community right-to-buy legislation in line with the amendments to Part 2 of the 2003 Act and intend to take this forward in the Community Empowerment (Scotland) Bill. [...] we discussed and agreed that while the Local Government and Regeneration Committee was still best placed to lead on the overall Bill, there would be merit in the Rural Affairs, Climate Change and Environment Committee taking the lead on consideration of the community right to buy provisions of Part 4 of the Community Empowerment (Scotland) Bill at Stage 1 and reporting its findings to the Local Government and Regeneration Committee. We also thought there would be merit in having any relevant amendments on community right to buy referred to the Rural Affairs, Climate Change and

³ Community Empowerment (Scotland) Bill, as introduced (SP Bill 52, Session 4 (2014)). Available at: [http://www.scottish.parliament.uk/S4_Bills/Community Empowerment \(Scotland\) Bill/b52s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd.pdf).

⁴ Community Empowerment (Scotland) Bill. Explanatory Notes (SP Bill 52-EN, Session 4 (2014)) Available at: [http://www.scottish.parliament.uk/S4_Bills/Community Empowerment \(Scotland\) Bill/b52s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-en.pdf).

⁵ Community Empowerment (Scotland) Bill. Policy Memorandum (SP Bill 52-PM, Session 4 (2014)) Available at: [http://www.scottish.parliament.uk/S4_Bills/Community Empowerment \(Scotland\) Bill/b52s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-pm.pdf).

⁶ Scottish Parliament (2012). *Standing Orders*, 4th Edition (4th Revision). Available at: http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/SO4_Revisions_Complete.pdf.

Environment Committee at stage 2. I am happy to confirm that this is the Scottish Government's preferred way forward."⁷

31. At its meeting on 1 October 2014 the RACCE Committee agreed to consider Part 4 of the Bill and to report its findings to the Local Government and Regeneration Committee.

32. Part 4 of the Bill makes amendments to the community right-to-buy provided for under part 2 of the Land Reform (Scotland) Act 2003 ("the 2003 Act"). The Bill also inserts a new Part 3A into the 2003 Act which provides a framework for community bodies representing communities across Scotland to purchase abandoned or neglected land without a willing seller, in order to further the achievement of sustainable development of land.

33. The LGR Committee considered and agreed its initial approach to the Bill on 25 June 2014. It launched a call for evidence on 26 June 2014 with a closing date for receipt of written evidence of 5 September 2014. 162 written submissions were received by that Committee and made available to the RACCE Committee. The LGR Committee took evidence from stakeholders and those with an interest in the Bill between September and November 2014. The LGR Committee agreed that as the RACCE Committee had undertaken to consider Part 4 of the Bill the LGR Committee would exclude consideration of evidence on the issues raised in Part 4.

34. The Scottish Parliament Information Centre (SPICe) published a briefing⁸ on the Bill which proved very helpful to the Committee during its scrutiny.

Rural Affairs, Climate Change and Environment Committee's approach and call for views

35. The RACCE Committee agreed its approach to consideration of the Bill at Stage 1 at its meeting on 8 October 2014. The Committee decided not to issue an additional call for evidence, but agreed to utilise the evidence received by the LGR Committee, and offered those giving oral evidence, and anyone else who wished to, the opportunity to submit additional evidence in advance of the oral evidence sessions. The Committee received four additional written submissions.

Witnesses

36. The Committee took oral evidence from the Scottish Government's Bill Team on 19 November 2014, and then from stakeholders on 26 November 2014 and 3 December 2014. The Committee's oral evidence-taking concluded with a session with the Cabinet Secretary for Rural Affairs, Food and the Environment, Richard Lochhead MSP on 10 December 2014.

⁷ Correspondence from the Scottish Government (21 August 2014). Available at: [http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.21.08_-_Community_Empowerment_\(Scotland\)_Bill.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.21.08_-_Community_Empowerment_(Scotland)_Bill.pdf).

⁸ Scottish Parliament Information Centre. (2013) Crofting (Amendment) (Scotland) Bill. SPICe Briefing 12/68. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-25.pdf [Accessed 10 May 2013].

37. Extracts from the minutes of all the meetings at which the Bill was considered are attached at Annexe A. Where written submissions were made in support of evidence given at meetings, these are linked, together with links to the *Official Report* of the relevant meetings, at Annexe B. A link to all other written submissions, including supplementary written evidence, can be found at Annexe C.

38. The Committee extends its thanks to all those who gave evidence on the Part 4 of the Bill within a very tight timeframe. The cooperation of all involved was very much appreciated.

BACKGROUND TO AND PURPOSE OF THE BILL

Legislative background

39. Part 4 of the Bill amends the Land Reform (Scotland) Act 2003 (the “2003 Act”). The Explanatory Notes accompanying the Bill state—

“Part 2 of the 2003 Act provides bodies representing rural communities with rights to register an interest in land with which the community has a connection. These bodies have a right to purchase that land if the owner is willing to sell it. Part 2 of the 2003 [Land Reform] Act sets out the land in respect of which an interest can be registered, and the procedure for registering an interest. It also sets out the circumstances in which the right to buy the land in respect of which an interest arises and the procedures for exercising it (including procedures for valuation of the land, for appeals, and for compensation).

40. The Committee understands that post-legislative scrutiny of the Land Reform (Scotland) Act 2003, a summary of evidence and a recent review of options for further land reform have informed the development of the Bill.

Contents/purpose of the Bill

41. The Explanatory Notes that accompany the Bill state that—

“... the Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will – empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and support an increase in the pace and scale of public service reform by cementing the focus of achieving outcomes and improving the process of community planning”.

42. The Committee understands that the Bill is a result of a number of consultations and other preparatory work and is set within the Scottish Government’s wider programme of public service reform.

43. The Bill is in a number of parts—

- Part 1 aims to provide a statutory basis for the issue of ‘National Outcomes’;

- Part 2 contains a number of reforms to the system of community planning;
- Part 3 provides for a process to allow community bodies to become involved in the delivery of public services;
- Part 4 makes a range of changes to the community right to buy land;
- Part 5 provides for a process to allow community bodies to take on assets from the public sector;
- Part 6 makes a number of reforms to the system of common good
- Part 7 is concerned with allotments; and
- Part 8 allows local authorities to set their own reliefs for business rates.

Part 4 Community Right to Buy

44. Part 4 of the Bill proposes a number of amendments and additions to the 2003 Act. At present the right-to-buy provisions in Part 2 of the 2003 Act apply only to community bodies representing rural areas.

45. Section 27 of the Bill amends the definition of ‘registrable land’ and the power of the Scottish Ministers to define ‘excluded land’, so that the community right-to-buy applies across Scotland.

46. Section 28 of the Bill extends the types of body which may be community bodies under Part 2 of the 2003 Act and gives Ministers a power to make regulations which prescribe other types of area by which a community may define itself.

47. Sections 29 to 47 make a number of changes to the detailed procedures and requirements of the community right-to-buy process.

48. Section 48 of the Bill inserts a new Part 3A into the 2003 Act to give community bodies a right to acquire land in certain circumstances without a willing seller and sets out the processes and procedures involved. Eligible land is that, which in the opinion of Ministers, is wholly or mainly abandoned or neglected.

49. The Financial Memorandum states that Ministers do not anticipate that modifications to Part 2 of the 2003 Act should impose any significant additional costs on the Scottish Government.

Scottish Government consultation

50. The Scottish Government issued a consultation on a proposed Community Empowerment and Renewal Bill on 7 June 2012. This was followed by a further consultation between 6 November 2013 and 24 January 2014. A draft Bill was not included in the consultation document.

51. The Committee explored the effectiveness of the consultation process on the Bill with stakeholders. Many stakeholders who had been actively involved in the issue of land reform; who had engaged with consultations issued by the Land Reform Review Group; who had participated in consultations on the Bill and; who were also used to dealing with legislation, stated that they were reasonably satisfied with the level of information that was provided. However, the Committee heard that some who were perhaps less used to dealing with legislation found it

confusing and would have welcomed further information. Some stakeholders who had been engaged with the land reform agenda considered that there could have been further consultation on some elements of the Bill. In oral evidence to the Committee, Sarah-Jane Laing of Scottish Land and Estates stated—

“We would probably have liked more consultation on the definitions of abandoned land and neglected land, which I am sure we will talk about later”.⁹

52. The Committee understands that the majority of stakeholders were content with the level of consultation on the issues contained in the Bill. However, the Committee considers that often the ‘devil is in the detail’ and, given the concerns of stakeholders in respect of many of the provisions in the Bill, the Committee is of the view that it would have been helpful to stakeholders and to this Committee, and may have resulted in fewer recommendations for amendment, if a Scottish Government consultation had taken place on a draft Bill.

GENERAL ISSUES CONSIDERED BY THE COMMITTEE

53. Before the Committee comments on the specific sections of Part 4 of the Bill, and examines other issues which were drawn to its attention, it addresses three central questions—

- Is Part 4 of the Bill required, and/or was there a better way of achieving the policy aims?;
- Has Part 4 of the Bill been appropriately drafted?; and
- Will Part 4 of the Bill solve the problem?

Is a Bill required, and/or was there a better way of achieving the policy aims?

54. There was general agreement amongst stakeholders that revision to the 2003 Act was necessary and legislation was required to remedy the defects of the 2003 Act and to enact the necessary changes. In written submissions, and in the provision of oral evidence, stakeholders welcomed Part 4 of the Bill, extending the community right-to-buy to all of Scotland, and welcomed the proposed simplifications to Part 2 of the 2003 Act. However, the Committee heard that, as drafted, Part 4 of the Bill contained significant omissions, and many stakeholders considered that further clarification and additional measures were needed to strengthen this part of the Bill if it was to be effective.

55. The majority of stakeholders appeared to be content that the Community Empowerment Bill was the appropriate vehicle for the provisions as set out in Part 4 of the Bill. However, the Committee heard limited evidence that the provisions in Part 4 may sit better within the forthcoming land reform legislation. Sarah-Jane Laing of Scottish Land and Estates commented on land reform as a process and stated—

⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 9.

“It is not necessary for all land reform measures to be in one bill: land reform is affected by various pieces of legislation. However, we need to ensure that people have clarity about what is happening. Simon Fraser referred to how changes impact on other changes; I worry that there might be some confusion if we have parallel pieces of legislation dealing with the same issue”.¹⁰

56. The Committee questioned Richard Lochhead, the Cabinet Secretary for the Environment, Food and Rural Affairs, on the decision to use the Community Empowerment Bill as a vehicle for the Part 4 provisions. The Committee heard from the Cabinet Secretary that land reform as a whole was undergoing huge change and, in oral evidence to the Committee, he stated—

“We have used the last 10 years’ experience of the Land Reform (Scotland) Act 2003 to ensure that the new Act will be easier to use and will give communities greater flexibility. As a whole the Community Empowerment (Scotland) Bill creates new rights for community bodies and new duties on public authorities, providing a legal framework that will promote and encourage community empowerment and participation...”¹¹

57. The Cabinet Secretary stated that the process of land reform incorporated a wide programme with various elements of activity, including this Bill, the agricultural holdings review and the forthcoming land reform bill. He told the Committee that as the Scottish Government wished to make changes to the Land Reform (Scotland) 2003 Act quickly, the Community Empowerment (Scotland) Bill was considered to be an appropriate vehicle.

58. The Committee considers that a Bill is required to remedy the defects of the 2003 Act and achieve the aim of extending the community right-to-buy. The Committee recognises that land reform is an ongoing and complex process and the Part 4 provisions of the Bill address some of the issues of the land reform agenda. The Committee considers that the Part 4 provisions could have been incorporated within the forthcoming land reform legislation but recognises the desire of many stakeholders and of the Scottish Government to resolve the identified shortcomings in the Land Reform (Scotland) Act 2003 speedily and, on that basis, the Committee is content that the Part 4 provisions have been included in the Community Empowerment (Scotland) Bill.

Has the Bill been appropriately drafted?

59. The Law Society of Scotland welcomed the policy intent of the Bill, but expressed concern in relation to its complexity. In terms of Part 4 of the Bill the Law Society of Scotland stated—

“There are multiple amendments to certain sections of the 2003 Act which are rather difficult to follow and this does not seem to sit well with the aim of

¹⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Cols 9-10.

¹¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 3.

empowering communities. The Society suggests that it would be simpler to repeal and re-enact part 2 of the 2003 Act...The Society also notes that a lot of the detail will be set out in subsequent regulation and also guidance and this makes it difficult at this stage to anticipate the overall effect of these provisions.”¹²

60. The concerns of the Law Society of Scotland in relation to the drafting of the provisions contained in Part 4 of the Bill and its concerns with respect to the provisions that are to be left to subsequent regulation were echoed by a number of stakeholders. Many stakeholders commented on the omission of a definition of the terms wholly or mainly abandoned or neglected on the face of the Bill and many, including the Community Land Fund, Community Land Scotland, the Community Woodland Trust, the Development Trusts Association Scotland, the Community Land Advisory Service and Scottish Land and Estates also highlighted concerns with respect of a number of the detailed provisions.

61. The Committee is aware of the concerns of many stakeholders in relation to the drafting of the Bill and in relation to what is included and what is to be left to further regulation and guidance. The Committee shares some of those concerns and comments on this in further detail throughout the report.

Will the Bill solve the problem?

62. The Committee understands that almost 500,000 acres of land is now in community ownership. The Development Trusts Association Scotland’s survey of 2012 notes that “the vast majority of this area (95%) comprises 17 large rural estates under community ownership”.¹³ Almost 60,000 acres of land has been purchased by 16 communities under Part 2 of the 2003 Act and there are currently 171 Community Bodies with an interest in local assets across Scotland. The Scottish Government’s target for community ownership is 1 million acres by 2020. The Policy Memorandum from the 2003 Bill states that—

“The objective of land reform is to remove the land-based barriers to the sustainable development of rural communities. To achieve this there needs to be: Increased diversity in the way land is owned and used: in other words, more variety in ownership and management arrangements (Private, public, partnership, community, not for profit) which will decrease the concentration of ownership and management in a limited number of hands, particularly at local level, as the best way of encouraging sustainable rural development; and Increased community involvement in the way land is owned and used, so that local people are not excluded from decisions which affect their lives and the lives of their communities.”

63. Oral evidence to the Committee suggested that the 2003 Act could be viewed as enabling legislation, the benefits of which were challenging to quantify. However, there was broad consensus that community confidence and cohesion in

¹² Written submission. Law Society of Scotland.

¹³ Development Trusts Association Scotland baseline survey 2012

rural Scotland had been transformed in the last 10 years. Jon Hollingdale, of the Community Woodlands Association, stated—

“The number of successful acquisitions under the 2003 Act is pretty low; I think that there have been about 16 in 10 years, which does not seem a hugely positive track record, although the Act has a wider symbolic value. The Act sets a framework, and it has been easier to negotiate settlements for other transfers to community ownership because the Act is there. In that respect, the Act has had a very positive effect. Nevertheless, it is probably fair to say that there has not been a step change in the rate of community ownership. .. It has definitely helped, but perhaps not to the extent that we had hoped it would.”¹⁴

64. This view was echoed by a number of stakeholders in the oral evidence sessions including Malcolm Combe¹⁵, Rory Dutton of the Development Trusts Association Scotland and Sarah-Jane Laing.

65. However, the Community Woodlands Association noted that “the complexities and hurdles contained within the Act have severely limited its use on the ground” and Jon Hollingdale stated—

“... the Bill has not addressed some of the fundamental structural problems with part 2 of the 2003 Act and the ways in which it does or does not work.... Questions such as whether we need a two-step registration process that is very much at the seller’s whim are far bigger and more fundamental than what form of community body is sitting there, waiting for the land or whatever to become available.”¹⁶

66. Despite the concerns detailed above and those considered in more detail later in this report, there seemed to be broad agreement across stakeholders regarding the policy intention of Part 4 of the Bill. Whilst many stakeholders considered the Bill could have gone further, a significant majority, including Community Land Scotland, the Development Trusts Association Scotland and the Community Woodland Association welcomed the Scottish Government’s commitment to revise Part 2 of the Land Reform (Scotland) Act 2003 and considered that a number of amendments should improve the usability of the legislation.

67. The Committee recognises the enabling effect of the Land Reform (Scotland) Act 2003 but is also aware that for many communities wishing to acquire land, some of the provisions of that Act may have created complexities and limited its use on the ground. The Committee is of the view that while the provisions of the Bill could have gone further, this Bill is part of a wider process of land reform and the Committee considers that, once

¹⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 14.

¹⁵ Appearing in an individual capacity.

¹⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 16.

amended as recommended by the Committee, the Bill should resolve many of the problems of the 2003 Act.

SUPPORTING DOCUMENTATION

Policy Memorandum

68. In June 2014, the Convener of the LGR Committee wrote to the Minister for Local Government and Planning, seeking clarification on a number of issues relating to the Policy Memorandum stating that it was “little more than a superficial overview” that did not provide “sufficient material to allow for this Part to be scrutinised in a timely manner as part of the Stage 1 process”.¹⁷

69. The Scottish Government’s response was received on 1 August 2014. This provided some further detail, and the accompanying letter from the Minister states that the Government aimed to “provide a succinct and broad overview of the policy underlying the Bill as a whole and each Part individually”, adding that “people can be put off by lengthy documents with a great deal of detail”, and that the Policy Memorandum is “only one of the suite of documents that accompany the Bill”.¹⁸

70. The Policy Memorandum devotes less than three pages to Part 4 of the Bill, at one point summarising 20 sections in seven bullet points. The Committee explored with stakeholders whether they were content that they had been provided with the necessary information to fully explain the purpose, policy choices and provisions of the Bill.

71. In oral evidence to the Committee, Sarah-Jane Laing stated—

“I am not sure we have had enough information. I have come to the conclusion having discussed elements of the Bill, because we have different people saying provisions mean different things. That means that, somewhere along the line, the explanatory notes and the policy memorandum are not providing enough information”.¹⁹

72. This view was echoed by Jon Hollingdale who stated—

“What was missing—we will probably pick up this later—is how certain provisions are expected to deliver the outcomes in the Policy Memorandum. On a line-by-line basis, there are gaps. Although the Government wants to achieve X, it is saying Y. That does not appear to work for us”.²⁰

¹⁷ Correspondence from the Local Government and Regeneration Committee to the Scottish Government (June 2014). Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/20140109-KS_to_Minister_LGP_on_Comm_Emp_Bill_Policy_Memo_20140625.pdf.

¹⁸ Correspondence from the Scottish Government (1 August 2014). Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Kevin_Stewart_MSP_Letter_-_1st_August_2014.pdf.

¹⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 10.

²⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 10.

73. John Mundell, Chief Executive of Inverclyde Council, stated—

“The brevity of the Policy Memorandum probably does not help, bearing in mind the complexity of the issues that are addressed in the Bill....I work in the community environment and try to make sure that we liaise and serve our communities in the right way. The Bill is very complex. I am not sure that we have managed to simplify the issues enough so that normal members of the public who are not, as we are, immersed in the issues can understand what the Government is trying to achieve”.²¹

74. Wendy Reid of the Development Trusts Association Scotland was of the view that the Policy Memorandum set out “quite well the policy context in relation to community empowerment, what is meant by that and the purposes of the bill...” although she continued “...we were also disappointed that the word “renewal” was dropped from the Bill title, because we thought that that contextualised the Bill as being about renewal and regeneration, as well as community empowerment. Community empowerment must be for a purpose: that purpose is renewal and regeneration.”²² This view was supported by Dr Coleen Rowan, of the West of Scotland Forum of Housing Associations.

75. The Committee questioned the Cabinet Secretary on how best to strike a balance between encouraging public dialogue and participation and providing sufficiently detailed information. The Cabinet Secretary responded by outlining the importance of presenting the high level and broad policy objectives and striking the balance between these.²³

76. The Committee considers that Policy Memorandum should strike a balance between presenting the high level and broad policy objectives 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.

Sustainable development

77. Argyll and Bute Council raised concerns in relation to sustainable development stating “There is limited consideration of the Bill on the various elements of Scotland’s sustainable development (e.g. land use/environment) and it would be useful if a more comprehensive assessment of the impact was provided”. The Scottish Environment Protection Agency suggested that the Policy Memorandum provides a “light touch” assessment of the sustainable development aspects of the Bill stating “...the Bill has the potential to make a positive contribution to sustainable development and there may be an opportunity for

²¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 48.

²² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 48.

²³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 4.

Government to provide regulations and/or guidance to help all parties maximise these opportunities”.²⁴

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.

Human rights and equalities

79. The Policy Memorandum states that the “Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights”, and acknowledges the role of ECHR Article 1, Protocol 1 (A1P1) in certain sections of the Bill, including section 48 (abandoned and neglected land). However, evidence suggested that there is a lack of detail in the Policy Memorandum in relation to human rights, and this makes engagement in a broader discussion about the role that community right-to-buy has to play in human rights difficult.

80. The right to property is recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); that right being expressed in Article 1, Protocol 1 (A1P1). The Committee understands that A1P1 does not mean that private ownership is sacrosanct in all circumstances. A landowner can be divested of ownership when it is in the public interest for that to happen. In written evidence, Malcolm Combe stated—

“The yin that is the apparently retarding force of A1P1 is balanced against the yang of Article 11 of the UN Covenant on Economic, Social and Cultural Rights, which guarantees certain rights such as sanitation, food and housing. Scottish legislation must not be in breach of the ECHR, in terms of the Scotland Act 1998, but the Committee should be aware that human rights do not begin and end at Strasbourg (where the European Court of Human Rights sits.)”²⁵

81. The Committee heard a range of evidence in relation to the Bill’s proposals and ECHR, and there appears to be a general agreement that the provisions are ECHR compliant. However, some evidence has suggested that it goes much further than would be required in order to achieve a “fair balance” required by ECHR A1P1, particularly in relation to section 97H. In written evidence, Community Land Scotland stated—

“This appears to be a very high and most probably impossible hurdle to be overcome and unnecessary to meet ECHR requirements; it implies that, even if a community was able to show that the land was mainly neglected for the

²⁴ Written submission. Argyll and Bute Council.

²⁵ Written submission. Malcolm Combe.

purpose of its sustainable development, and this was not in the public interest, if that owner could show that, none the less, their continuing ownership was not “inconsistent” with some level of sustainable development then the community’s application must be refused”.²⁶

82. Professor Alan Miller, Chair of the Scottish Human Rights Commission, said he did not think that human rights had been brought in to the wider context of the Bill to a great enough extent. He said it would have been better to concentrate on the wider human rights aspects of the legislation and he felt that the debate had become too narrow and could have been wider in focus. Professor Miller stated—

“If human rights is seen in the wider context that I have set out, there will be a realisation that it drives us not towards courts and lawyers but towards having an environment in which there is more constructive dialogue between landowners and communities”.²⁷

83. Professor Miller went on to state—

“If we are talking about community empowerment, we really have to understand what the community’s rights are, and we should not let the debate be polarised by the notion of an absolute right-to-buy, which does not exist. Communities cannot be given that. There has to be a public interest, so it is a qualified right and not an absolute right-to-buy”.²⁸

84. The Equalities and Human Rights Commission commented on the delay in publication of the Equality Impact Assessment for the Bill, stating—

“We note the reference to the centrality of equality and human rights to the Bill’s aims as set out in the Policy Memorandum (para 6) and look forward to the publication of the Equality Impact Assessment for the Bill. Given the centrality of equality principles, law and policy to the Bill’s proposals, it would have been helpful to see the Equality Impact Assessment earlier in Stage 1: at the time of writing (late August) it is still not available”.²⁹

85. When questioned on the issues of human rights in relation to the Bill and the Part 4 provisions, the Cabinet Secretary talked about the need to strike a balance between property rights and the public interest, he stated “...we must have at the forefront of our mind the rights of communities and the wider public interest as much as the rights of landowners or property owners”.³⁰ He noted sympathy with Professor Miller’s comments and undertook to reflect on the points made by Professor Miller and others in relation to human rights issues.

²⁶ Written submission. Community Land Scotland.

²⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 45.

²⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 36.

²⁹ Written submission. Equalities and Human Rights Commission.

³⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 6.

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.

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.

Financial Memorandum

88. The Financial Memorandum states that Ministers do not anticipate that modifications to Part 2 of the 2003 Land Reform Act (sections 27 to 47), or the new Part 3A (section 48) “should impose any significant additional costs on the Scottish Government. (...) All additional costs would be met from existing resources.”³¹

89. In terms of communities and landowners, the Financial Memorandum states that there is a “large degree of uncertainty on the level of costs” that might be incurred as it will be up to individual bodies how to use and respond to the provisions. Notwithstanding the costs of acquisition it would appear to the Committee that, with respect to the Part 4 provisions, the legal costs arising from appeals may be the largest areas of potential cost for communities and landowners. However the Financial Memorandum does not provide a range of costs, as would be expected. The Committee understands that there are various funding schemes that communities can apply to, but an increase in applications could put pressure on those funds. Evidence indicates that the Bill is likely to generate significantly more community right-to-buy applications, and that there are associated difficulties in estimating demand and cost, not least for local authorities.

90. Highlands and Islands Enterprise’s written evidence to the Finance Committee states that—

“... there are difficulties in estimating demand in the first three years of operation of the new community right-to-buy, and that a reasonable estimate has been made to capture the costs, however the Bill is: [...] likely to generate significantly more community right-to-buy applications. We agree it is difficult to quantify the increased demand and consider an increase of between 5 and 10 per year to be on the conservative side. There are around 15 applications / year to register an interest at present. Extending these provisions to urban communities (with 80% of the population) is, in our view,

³¹ Community Empowerment (Scotland) Bill. Explanatory Notes (SP Bill 52-EN, Session 4 (2014)) Available at: [http://www.scottish.parliament.uk/S4_Bills/Community Empowerment \(Scotland\) Bill/b52s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Community_Empowerment_(Scotland)_Bill/b52s4-introd-en.pdf).

likely to generate more applications than anticipated which will generate additional costs for Scottish Government”.³²

91. The importance of adequately resourcing and supporting communities, particularly urban communities, was highlighted by David Cruickshank of the Lambhill Stables Community Development Trust who, in oral evidence, stated—

“The simple fact is that, in urban communities, there is not only significant deprivation but significant lack of resource. There is no point floating the possibility of ownership without resourcing that with capital and on-going revenue. There is no magic wand that will allow deprived communities suddenly to have the confidence and experience to own and manage resources; there must be resources coming in that would make that feasible”.³³

92. The Committee understands that there are also likely to be cost implications for public bodies, particularly for local authorities. In its written submission, Glasgow City Council considered that the provisions in Part 4 would potentially allow the Council to work with community bodies to take over surplus assets and undertake community owned and backed projects or deliver services not currently provided in a community but, in relation to Part 3A, the Council considered that there were financial implications of putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale—

“...In addition the financial implications for Glasgow may be significant in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy....(and)...in the circumstance where a registered interest has a negative impact on potential investment in the city..”.³⁴

93. The Finance Committee, in its report on the Bill, invited the RACCE Committee to “seek clarification of how the Community Land Fund’s budget was arrived at and to consider what parallels can be drawn between it and funding for community right to buy in the context of the Bill”.

94. The Committee explored the costs and funding of the Part 4 provisions with the Cabinet Secretary, specifically: what costs the Scottish Government anticipate for urban and for rural communities and landowners; what costs public bodies may have to bear; and what additional support is likely to be required to meet the anticipated increase in applications, particularly in an urban context.

95. The Cabinet Secretary confirmed the demand-led nature of community acquisitions and the difficulties in estimating what that demand may be, with the resultant degree of uncertainty in the Financial Memorandum. He noted the increase in the Land Fund to £10m from 2016 and a further £10m for the Empowering Communities Fund that will be available from 2015. He confirmed

³² Written submission to the Finance Committee. Highlands and Islands Enterprise.

³³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 49.

³⁴ Written submission. Glasgow City Council.

that the Scottish Government's commitment to meeting costs related to community right-to-buy (such as balloting costs) would have to be met from within the Government's budget and stated "Primarily the budgets will be used for communities as opposed to public bodies. If there are costs for public bodies, we will have to take them into account. However, the primary focus of the funds is helping communities." The Committee heard that funds for the Registers of Scotland to support the registration of all land in Scotland would be made available from Government. The Cabinet Secretary stated that "a number of public agencies and bodies will have to take the burden of this agenda as we move forward."³⁵ He also confirmed that the available funds would need to be kept under review in future years.

96. The Committee understands that community right-to-buy will be demand-led. 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.

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.

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 costs to communities and landowners and the indirect costs to public bodies and keep the funding requirements under review.

Rules relating to lottery funding

99. The Committee understands that the Finance Committee received evidence from Sport Scotland, relating to concerns about the duties of public bodies that award lottery funding, which stated—

"We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources.....we are required to ensure the additionality principle..."³⁶

100. The Committee sought clarity from the Cabinet Secretary on how the rules relating to lottery funding might impact on the community right-to-buy. The Cabinet

³⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 8.

³⁶ Written submission to the Finance Committee. Sport Scotland.

Secretary responded saying "...our initial view is that there is not a conflict and it should not present a problem."³⁷

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.

SPECIFIC ISSUES CONSIDERED IN PART 4

Nature of land in which community interest may be registered (section 27)

102. At present, the right-to-buy provisions in Part 2 of the 2003 Land Reform Act (and secondary legislation) apply only to community bodies representing rural areas (i.e. with a population of less than 10,000). Section 27 of the Bill amends the definition of 'registrable land' and the power of Scottish Ministers to define 'excluded land', so that the community right-to-buy applies across Scotland, irrespective of the size of the settlement. This section also provides for a community interest to be registered in salmon fishing and mineral rights which are owned separately from the land to which those interests relate.

103. Extending the community right-to-buy to the whole of Scotland was welcomed by the majority of stakeholders who considered that parity of opportunity should be extended to all and saw no reason why urban communities and those in settlements of over 10,000 people should not enjoy the same rights as those in smaller rural communities. Nourish Scotland highlighted the importance that small urban sites can have for a high number of people and believe that these sites can have a considerable impact on the surrounding community even though many do not contribute significantly to the acreage target.³⁸

104. Duncan Burd, of the Law Society of Scotland, raised a concern in oral evidence and in the Society's written submission that was echoed by some other stakeholders, in relation to the possibility of development blight in urban areas. The Society stated—

"... a small community in an urban environment might be interested in a particular asset that is part of a larger asset that is capable of development. In such a case, the development could become blighted and there could be a scenario of competing interests. It is important [...] to include a safeguard to balance out the greater development good to the Community".³⁹

105. Evidence from Community Land Scotland in relation to rural areas differed. Peter Peacock, Policy Director of Community Land Scotland, stated—

³⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 13.

³⁸ Written submission. Nourish Scotland.

³⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Cols 40-41.

“[...] the blight that we experience in the areas that have bought their land in rural Scotland is not being caused by the community purchase; rather the community bought the land to get round the blight that it felt was there, because the land was not being developed to its full potential by the current ownership structure. The Communities that Sandra Homes and John Watt help, through their roles, are interested in developing their assets, because they feel that that has not happened in the past. I am sure that the technical points that Mr Burd raised are worth considering, but it would be wrong to characterise the communities as causing blight, because that is not necessarily the case.”⁴⁰

106. The Committee asked the Cabinet Secretary if he shared the concerns of the Law Society of Scotland in relation to potential development blight and questioned whether it was the intention of the Scottish Government to bring forward amendments to address those concerns at stage 2. The Cabinet Secretary confirmed that in applying the public interest and sustainable development tests the issue of blight would be taken into account and stated—

“The Law Society describes a scenario that would be taken into account as part of the process. Ministers would not want to create a blight because blight is negative. That would be taken into account in the context of sustainable development.”⁴¹

107. The Committee recognises the overwhelming support of stakeholders to extending the community right-to-buy to the whole of Scotland. The Committee considers that parity of opportunity should be available to all communities and welcomes the provisions in section 27 of the Bill extending the community right-to-buy Scotland wide.

108. The Committee understands the concerns of the Law Society of Scotland and others in relation to potential blight in urban areas. However, the Committee is re-assured by the response of the Cabinet Secretary that consideration of this would be taken into account in the process of assessing an application and in applying the public interest and sustainable development tests.

109. The Law Society of Scotland also raised concerns in relation to the possible unintended consequences of extending the right-to-buy to urban areas where, in its view, land may be subject to redevelopment proposals and the potential uncertainty that applications could create, adversely impacting on investment decisions. In its written submission it suggests that clear rules are needed on how Ministers will deal with an application where there are active development proposals and suggests “...that land subject to an active planning permission will, for a period of time, not be subject to registration under Part 4 of the Bill”. It suggests that primary legislation should offer—

⁴⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Cols 40-41.

⁴¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 15.

“... greater certainty in the circumstances in which the community right to buy would operate in relation to active development proposals. In particular, the Society suggests 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 allow investment decisions to be made with a degree of certainty but would also retain the community right to buy in the event that the development did not proceed as envisaged”.⁴²

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.

111. The Community Land Advisory Service questioned whether specific mention of salmon fishings and mineral rights may create an implication that the right-to-buy is not exercisable in relation to other separate tenements⁴³ and, in its written submission, states—

“... the right-to-buy should also be available for rights to gather oysters and mussels, rights of port and ferry, and also sporting rights separate tenements created under section 65A of Abolition of Feudal Tenure (Scotland) Act 2000”.⁴⁴

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.

Meaning of community (section 28)

113. Section 34 of the 2003 Act provides that the only type of legal entity that can apply to register a community interest in land is a company limited by guarantee. It also provides for the use of postcode units in order to define a community that a community body can represent. Section 28 of the Bill extends the types of body which may be community bodies under Part 2 of the 2003 Act to include Scottish Charitable Incorporated Organisations (SCIOs) and any other type of body which Ministers specify in regulations. This is subject to certain provisions e.g. that the SCIO must have not fewer than 20 members, that the majority must be members of the community, and that provision must be made for proper financial management. This section also gives Ministers a power to make regulations which prescribe other types of area by which a community may define itself. According to the Policy Memorandum, the Bill makes it easier for communities to define themselves in a greater variety of ways than by postcode.

⁴² Written submission. Law Society of Scotland.

⁴³ A tenement is defined as any type of property of a permanent nature, including land, houses and other buildings and attached rights.

⁴⁴ Written submission. Community Land Scotland.

114. Oral evidence broadly supported the amendments to extend the type of bodies that can be considered to be a community body and to provide greater flexibility in the definition of community. However stakeholders expressed concerns in relation to the way in which community bodies were defined and some stakeholders suggested that the Bill should specify the characteristics of a community body rather than list the types of legal entity that can apply to register. Opinion was divided on the focus on geographic communities and on the inclusion of communities of interest. Some stakeholders considered that their inclusion could be ‘a good deal more complex’, and others considered that a way had to be found to put the emphasis on people rather than place.

Defining community bodies

115. There was support amongst stakeholders for the inclusion of Scottish Charitable Incorporated Organisations in the definition of an appropriate community body. In their written submission, the Development Trusts Association Scotland highlighted the use amongst community bodies of Community Benefit Societies (Bencoms) and stated—

“In our experience many community organisations using a Bencom structure can meet the ‘prescribed requirements’ of an appropriate community body, and given the increasing use of community shares to fund the acquisition and development of assets, the omission of Bencoms from the legislation seems perplexing.”⁴⁵

116. In written evidence,⁴⁶ the Scottish Federation of Housing Associations call for the Bill to be amended to specifically list housing associations and co-operatives as community bodies. Similarly, the Church of Scotland Trustees proposed that the definition of community body be widened to include charities such as them.⁴⁷

117. In its written submission to the Committee, Brodies LLP highlighted six different type of community body provided by the Bill and questioned the necessity for this and what it considered to be the “lack of consistency for the requirements of different bodies.”⁴⁸ It suggested that clear guidance on the constitution and powers of each should be provided.

118. Some stakeholders proposed an alternative approach to defining community bodies, focussing on the criteria and characteristics of bodies, rather than listing types of legal entity. The Forest Policy Group considered that the meaning of community as defined in the Bill was too narrow and should be defined by eligibility criteria, rather than specific organisational types. It continued, stating—

“Further, we feel it is inconsistent to include SCIOs as eligible community bodies but not other types of community organisation for example a community benefit society. In Section 28(2) of the Bill, Ministers will be able to make orders allowing other organisational types of community bodies to be eligible. Our concern with this level of non-specificity is that there is no

⁴⁵ Written submission. The Development Trusts Association Scotland.

⁴⁶ Written submission. The Scottish Federation of Housing Associations

⁴⁷ Written submission. Church of Scotland Trustees.

⁴⁸ Written submission. Brodies LLP.

certainty as to when this might happen or what the mechanism for making an allowance order is. Clarification on these points is welcomed.”⁴⁹

119. The Plunket Foundation also suggested it would be better for legislation to simply define the characteristics of a democratically accountable community body and not restrict the choice of legal structure to the two options currently proposed. It raised particular concerns about the exclusion of Registered Societies (Formerly known as Industrial and Provident Societies) and the inability within the 2003 Act to use community shares to fund the acquisition of the assets, stating—

“We cannot predict now what legal structures communities will need in the future to take advantage of the opportunities presented by the Bill, so cannot see any reason to restrict them unnecessarily? If Ministers are uncomfortable with the proposal that the exact type of legal structure for an eligible community body is left open, eligibility in principle should at the very least be extended to include Community Benefit Societies and Community Interest Companies as well as SCIOs”.⁵⁰

120. The Committee explored the definition of eligible community bodies with the Cabinet Secretary. He confirmed that the Bill would relax the definition of community to include companies limited by guarantee and SCIOs. The Cabinet Secretary also confirmed that the Scottish Government was considering potential stage 2 amendments to extend the list of community bodies.

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.

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.

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

⁴⁹ Written submission. Forest Policy Group.

⁵⁰ Written submission. Plunkett Foundation.

housing associations and co-operatives, and charities such as the Church of Scotland, as community bodies.

Membership requirement for Scottish Charitable Incorporated Organisations (SCIO's)

124. John Mundell, Chief Executive of Inverclyde Council, commented on the membership requirement for SCIO's. He stated that—

“The Bill says that a SCIO must not have “fewer than 20 members”. That is particularly restrictive. We have a couple of SCIOs that are working very well, one of which has eight members and the other has 10. Are we now saying that, even though we know what the SCIO wants to achieve and we are doing everything that we can to support it, because someone in an ivory tower has said that the SCIO must have 20 members, it cannot continue? It does not have 20 members, but it is an active and progressive community and wants to make things happen, but it cannot, because it is barred. That issue needs to be addressed. Does the bill have to be prescriptive about having a minimum of 20 members on a SCIO?”⁵¹

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.

Communities of place and communities of interest

126. The current provisions in the Bill are based on a geographic community but some stakeholders considered that the Bill might be more enabling and accommodating of future needs if it also included the option for communities of interest to be included.

127. The Committee explored the possibility of including communities of interest within the Bill with stakeholders in the oral evidence sessions and with Cabinet Secretary.

128. In oral evidence to the Committee, Sandra Holmes, of Highlands and Islands Enterprise, stated—

“Communities of interest have a legitimate role but, under the existing structure, the definition of “community” is centred on a geographic community. Currently, the geographic community has to be described using postcodes—although that might change—and the membership of the community has to be established to demonstrate that a majority of them are in favour. It is difficult to get a constituency of voters for a community of

⁵¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 64.

interest—how do we determine where the community of interest is and who would get a vote in a ballot?”⁵²

129. In its written submission, Helensburgh Community Woodland Group raised concerns about the definition of community where, in its view, individual projects in urban areas may only concern part of an area and a minority of those who live within it and questioned whether it would be appropriate to use a single council election ward for a specific area as the interested community rather than the settlement as a whole. It stated that its preferred option would be that of defining the community by people who would be directly affected or would directly benefit from the facility.

130. The Committee discussed extending the definition of community to include communities of interest with the Cabinet Secretary. In response, the Cabinet Secretary stated—

“In theory a community of interest could be an organisation that is based far away from the community. It might have some local members and it might have an interest in the community but that is not really a community. It does not have a sense of place and it is not rooted in a place”. He continued to say “...it is important that the community that defines itself as a “community” is actually the community. The idea that we should allow a community of interest to be included in the definition of “community” gives us some concerns. Therefore we are not proposing to include it in the definition because it is quite clear that a body could be set up that has an interest in the community but is not the community itself. We want to maintain the sense of place and ensure that we are genuinely dealing with the community”.⁵³

131. The Committee welcomes the provision in the Bill that enables communities to define themselves in a greater variety of ways than by postcode.

132. The Committee heard evidence suggesting that the definition of community should include communities of interest as well as those of geographic place. The Committee is also aware of the dispersed nature of some rural communities, and of many communities of interest within those areas. The Committee had some sympathy with those who sought to include communities of interest in the Bill, however agrees with the Cabinet Secretary on the importance of communities maintaining a sense of place, and being rooted in place.

Provision of Minutes upon request (section 28(3)(c) and (4)(1A)(g))

133. Some stakeholders who have been active in community land acquisitions highlighted a number of practical concerns in relation to the provision of minutes upon request. The Highland Council⁵⁴ and Community Land Scotland⁵⁵ sought

⁵² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 46.

⁵³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Cols 19-20.

⁵⁴ Written submission. Highland Council.

⁵⁵ Written submission. Community Land Scotland.

clarity on a number of points: whether the minutes relate to all meetings – Board meetings, members meetings, sub committees; and whether these provisions relate only to ‘approved minutes’. Community Land Scotland had concerns that this provision would apply retrospectively to existing community bodies (not to a Part 3A or Part 3 body) which would have to convene special meetings to make alterations to their Articles and failure to do so could then result in a termination of interest or trigger consideration of compulsory purchase by Ministers. Community Land Scotland suggested that the same policy could be affected by a requirement for community bodies to enact bylaws or rules.

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.

Detailed procedures - Sections 29 - 47

135. The Scottish Government’s letter of 1 August⁵⁶ states that sections 29 to 47 of the Bill make a number of changes to “the detailed procedures and requirements of the community right-to-buy process, including streamlining and increasing flexibility.”

136. Evidence to the Committee indicated some areas of concern in relation to the detailed procedures. In written evidence, John Randall⁵⁷ noted a need to simplify procedures so that “genuine and strong applications cannot be thwarted by legal action on technical issues contrary to the wishes of Parliament when they passed the legislation”.⁵⁸

137. The issues raised in evidence are highlighted in the following sections. The Committee only comments on those sections on which it has a view.

Period for indicating approval under section 28 of the 2003 Act (section 30)

138. Section 30 amends section 38 of the 2003 Act, which sets out the criteria which must be met before an application to register a community interest in land is approved by Ministers and inserts a subsection that precludes Ministers considering any community support that is dated earlier than six months before the date on which an application to register a community interest in land is received.

139. Community Land Scotland⁵⁹ and the Community Woodlands Association⁶⁰ raised practical concerns in relation to the proposal for a six-month limit precluding

⁵⁶ Correspondence from the Scottish Government (1 August 2014). Available at: http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Responses_to_LGR_Committee_Questions_-_1st_August_2014.pdf.

⁵⁷ Writing in an individual capacity.

⁵⁸ Written submission. John Randall.

⁵⁹ Written submission. Community Land Scotland.

⁶⁰ Written submission. Community Woodlands Association.

Ministers considering any community support that is dated earlier than six months before the date an application to register a community interest in land is received. They both stated that registration of a community body can take in excess of 6 months itself in certain circumstances and feasibility and other studies may date back before that period. These bodies believe that Ministers should be free to take account of anything they consider relevant in indicating approval.

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.

Procedure for late applications (section 31)

141. Section 31 amends section 39 of the 2003 Act relating to the procedure for late applications. The Policy Memorandum states that it replaces “the “good reasons” test for “late” applications with one which sets out clear requirements to be met by community bodies when submitting a “late” application”.

142. An application is deemed to be “late” when it is received by Ministers after the owner of the land has taken action to transfer the land, but before missives are concluded or an option to acquire is granted. Key amendments include—

- allowing Ministers to request further information from the current owner (or a creditor in a standard security), to be provided within seven days of receipt of the request, to ensure that Ministers have the necessary evidence to determine whether an application is “late”;
- where further information is requested, extending the time that Ministers have to make a decision on whether an application is “late” from 30 days to 44 days;
- removing the requirement to show “good reasons” for not submitting an application before land came on the market and replacing it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person, or such relevant steps as Ministers consider reasonable were taken by a person. Section 31(9) inserts a new subsection (6) into section 39 of the 2003 Act to define relevant work and relevant steps;
- setting out the timescales in which the relevant work or steps must have been taken. Allowing Ministers to request further information from any relevant party within the relevant timescale;
- providing that where missives have been concluded or an option conferred in respect of the land Ministers must decline to consider the application; and
- land in respect of which the relevant work or steps have been carried out does not need to be the same land as that to which the application relates.

143. Many stakeholders commented on the registration process and the need for a process at all and/or the need for simplification of this. The Committee also received considerable comment on the process for late registration. Evidence noted that whilst many communities only start to take an interest in land acquisition when land comes on to the market, there was also a need to encourage a degree of proactivity because of the difficulties in supporting community bodies at short notice. Difficulties have also been noted with the need to re-register every five years. The Committee considers the need to register; the registration process, including pre-registration; late registration and re-registration in paragraphs 144 to 171.

The requirement to register

144. The requirement to register an interest in land was considered by many stakeholders in written and oral evidence. The comments of Wendy Reid, from the Development Trusts Association Scotland, on the need for simplification of the registration process, reflected the views of a number of stakeholders. She stated—

“I am in two minds about the registration process. The need to register is a prompt for communities to think about how they would like their communities to develop and what opportunities they would like to have to influence how things develop. However, the process is onerous, as is the reregistration process. There is something to be said for having an easier process for registering interest if a piece of land comes up for sale that the community had never anticipated would come up for sale, because things happen that no one could have predicted. As the Bill stands, it will be extraordinarily difficult for communities to do anything about such situations, which might involve the loss of a service or whatever. I am not sure about getting rid of registration altogether, although I can see that that would have advantages. What is useful about having to register is that it gets community organisations to think about why they might want assets and what they might want to do with them. We might not want to lose that prompt if we were to go down the route of not having early registration of interest”.⁶¹

145. Jon Hollingdale, of the Community Woodlands Trust, stated—

“As I understand it, the idea behind pre-registration is to encourage communities to be proactive, and I think that we will agree that being proactive and thinking ahead are generally better than simply being reactive to opportunities. However, having been encouraged to be proactive and make these registrations, communities are then not rewarded for doing that... If I were designing things from scratch, I would have a system in which communities...would carry out community development planning and identify the sort of land and buildings assets that they need to deliver the things that their community wants.... A specification would be laid down and when land

⁶¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Cols 14-15.

came on to the market, communities would have the possibility of pre-emption if that land fitted their previously announced specification”.⁶²

146. The option of registering land for a purpose which would take account of the preparatory work undertaken by communities was supported by Community Land Scotland.

147. In oral evidence to the Committee, John Watt reminded the Committee that the Land Reform Review Group, of which he was a member, produced a menu of rights for communities. He stated—

“...The first right that we suggested was a “right lite” whereby a community could simply register an interest. Under the 2003 act, there is a right of pre-emption. However, if there was 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. We thought that that might be a way of getting round everything becoming a late registration”.⁶³

148. This proposal was supported by the Community Woodland Association, which also suggested that there could be a requirement for a landowner to give notice to an established community body prior to any sale, which would mean that the community received notice before land went on the market.

149. The Committee explored the issues in the registration process with the Cabinet Secretary and asked why there was a need for registration at all. The Cabinet Secretary stated—

“The Government has to balance people’s right to sell their assets with the rights of the community” and he suggested that a community which is preparing and thinking about the future and is already defined would need to be in place. He also stressed his concerns that otherwise there would be a disadvantage to an owner who would have to wait for some time for the community to be formed and the process concluded and this would interfere with the rights of the owner wishing to sell.”⁶⁴

150. The Committee was interested to hear the views of stakeholders on the requirement on communities to register an interest in land. While the Committee understands that many communities only start to take an interest in land acquisition when land comes on the market and many stakeholders support the removal of the registration requirement, on balance the Committee considers there are benefits in encouraging communities to proactively engage in community development and, where possible, to identify the assets they may need to deliver their objectives. The Committee is also concerned that there can be difficulties in supporting community bodies at

⁶² Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 18.

⁶³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Col 53.

⁶⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Cols 25-26.

short notice. On that basis the Committee is, in principle, supportive of the requirement to register an interest in land.

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.

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.

Registration for late applications

153. Many stakeholders raised concerns with respect to the proposals for consideration of late applications to register an interest in land. This was considered to be an issue of great significance to the future prospects of community ownership. Many considered that the process of late applications should be considered as the norm, stressing that communities are often reactive. However, some stakeholders considered that the legitimacy of the process is undermined when late applications become the norm.

154. In written evidence to the Committee, Community Land Scotland stated—

“For a variety of legitimate reasons, communities do not think of or register an interest in land as an abstract exercise. For all communities to protect the potential interests of the community through timeous registrations of interest in land may require registrations of interest in a significant number of areas of land, with little or no prospect that they may ever come on the market. There are considerable administrative implications for a community and for government from any process of ‘mass registration’ of interests in land by communities, yet the current LRA rather founds on that broad assumption. Experience shows communities are also very reluctant to register and interest in land if they feel that might be interpreted as a hostile act by an owner”.⁶⁵

155. This view was supported by the Scottish Community Alliance which stated—

“In an ideal world a community body would survey all local land and assets, agree amongst themselves which assets are of strategic long term importance to the community and then set about making a multiple set of

⁶⁵ Written submission. Community Land Scotland.

applications, thereby registering interest in all these key assets. But the real world is not the ideal world. Communities are reactive not proactive by nature, and are galvanised into action usually only when something is threatened. But even if they had the inclination to think forward to the day that any of these strategic assets were to be put on the market it is unlikely they would wish to asset their rights due to the potential for ill feeling that this might arouse from the potential seller who will perceive this as a constraint on their freedom to access the best market price possible. The additional hurdles associated with a late registration also appear to be too burdensome. We would therefore support the position of Community Land Scotland in respect of this aspect of the Bill”.⁶⁶

156. Community Land Scotland suggested that the new provision which replaces the need for a community to show “good reasons” why it did not apply timeously with a provision to show they had undertaken sufficiently well in advance “such relevant work as Ministers consider reasonable was carried out”...may well make the opportunity for a late registration more difficult than it already is. It suggests that “this would not assist any objective of greater community ownership that was in the public interest.”⁶⁷

157. Highland Council stated that applications for late registration were becoming the norm, adding that—

“Given the likelihood that the number of late registrations will increase, it is considered that existing hurdles regarding the requirement to demonstrate additional community support and that the registration would be strongly in the public interest are of themselves sufficient without the new requirements suggested in the Bill.”⁶⁸

158. Community Land Scotland suggested that it would be best to accept late registration as the likely norm and that it, of itself, need not be justified by any prior action or lack of action, and instead could rest on the other existing tests for late registration. It also suggested that it might be possible to make provisions that where Ministers were notified by a land owner that they had an interest in selling their land, Ministers would take steps to seek to establish if a community had an interest in buying the land.⁶⁹

159. This evidence was supported by Highlands and Islands Enterprise (HIE), which suggested it would be helpful if communities could progress a late registration if they had considered purchase of an asset (specific or general) as detailed in a local development plan and stressed the importance of communities taking a strategic and holistic approach to their development through the establishment of whole community plans. HIE believes that community plans should be considered as appropriate evidence under the proposed ‘taking relevant work’ provision. It also suggested that guidance to clarify eligible work/steps would be beneficial. Based on their experience of working with communities, where often

⁶⁶ Written submission. Scottish Community Alliance.

⁶⁷ Written submission. Community Land Scotland.

⁶⁸ Written submission. Highland Council.

⁶⁹ Written submission. Community Land Scotland.

initial work was undertaken by a community council or working group with the intention that another body would pursue the community right to buy application, it suggests that consideration be given to de-coupling the requirements for relevant steps/relevant work and the practical application being made by the same community body.⁷⁰

160. Contrary to these views, the Historic Houses Association for Scotland⁷¹ and Scottish Land and Estates⁷² considered that the legitimacy of the process is undermined where late applications become almost standard. These organisations suggested that the late application procedure could be improved if a landowner could obtain exemption from a late application by giving forward notification (of six months) of a potential sale of land by advertisement in a local newspaper, giving the community body four months to organise itself and register an interest in the land, after which time Ministers would not consider a late application. They also suggested that they would welcome the introduction of a monitoring system into delays in the process for (Ministerial) consideration of applications.

161. Brodies LLP was of the view that community bodies should be obliged to explain why an application was not submitted prior to the land being put on the market and raised concerns that removing the good reasons test could make some landowners wary of putting land on the market for fear of “triggering” community interest.”⁷³

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

⁷⁰ Written submission. Highlands and Islands Enterprise.

⁷¹ Written submission. Historic Houses Association for Scotland

⁷² Written submission. Scottish Land and Estates.

⁷³ Written submission. Brodies LLP.

Committee urges the Scottish Government to de-couple the requirement for the work and application to be made by the same community body.

Re-registration

165. Many stakeholders expressed concerns with regard to the process and timescale for re-registering an interest in land. Community Land Scotland, the Community Woodland Association, the Development Trusts Association Scotland, Highland Council, and many others, suggested that the five-year timescale is too short and consideration should be given to extending this to ten years. The Committee understands that this view is supported by the Land Reform Review Group in its final report (section 17.1-9 &10).⁷⁴

166. Many stakeholders considered that it was important to retain the ability to test the will of the community on their continuing interest in purchase, while reducing the burden on communities and were concerned that the proposed re-registration provisions would require replicating the original registration demands. Stakeholders suggested that there was considerable scope to simplify the process. Sarah-Jane Laing said—

“...I think that all that is necessary is for it to be asked at the point of reregistration is whether there have been material changes. If the answer is yes, those involved would go down one route, and if it is no, they would go down another. I do not think that it would be a problem to have a dual process for reregistration...a material change such as a huge swell of opinion in the community, which could have different views and different needs, must be taken into consideration, but it would be possible to have a dual registration process”⁷⁵

167. Highland Council suggested that the requirement to re-register should be extended to ten years, in line with the recommendations of the Land Reform Review Group.⁷⁶ The Scottish Community Alliance stated that—

“Given the procedural burden placed on communities to re-register their interest after five years have lapsed, and given the assumption that late applications are viewed generally as the exception rather than the rule (and therefore the assumption that multiple applications should be being made by community bodies) we would support the proposition that the re-registration should be required after ten years rather than five”.⁷⁷

168. The Committee explored the re-registration process with the Cabinet Secretary, who stated—

“...Things can change in ten years. You can imagine a community defining itself, imagining its future, putting together its ideas and carrying out its registration but then finding that, ten years later, things were quite different.

⁷⁴ The Land of Scotland and the Common Good – Report of the Land Reform Review Group (2014). Available at: <http://www.scotland.gov.uk/Resource/0045/00451597.pdf>.

⁷⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 26 November 2014. Cols 23-24.

⁷⁶ Written submission. Highland Council.

⁷⁷ Written submission. Scottish Community Alliance.

We do not think that ten years would be a wise approach. The five year period was our judgement of a good timescale.”⁷⁸

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.**

170. **Whilst the Committee has some sympathy with those stakeholders who proposed an extension of the re-registration period from five to ten years, the Committee considers that circumstances can change over time and, if the re-registration process is substantially simplified, a requirement to re-register every five years is appropriate.**

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.**

Concluded missives, option agreements and registering interests (sections 32 – 35)

172. Sections 32 – 35 relate to evidence and notification of concluded missives or option agreements and notifying Ministers of certain changes to information relating to registered interests.

173. The 2003 Land Reform Act (section 51(2)(a)) provides that at least half of the members of the community must have voted or, if half of the members have not voted, the proportion which voted is sufficient in the circumstances to justify the community body buying the land.

174. Scottish Land and Estates,⁷⁹ the Historic Houses Association for Scotland⁸⁰ and the Community Land Advisory Service⁸¹ comment on section 33, which introduces a requirement for an owner to inform Ministers within 28 days of an exempt transfer being made of this taking place. They considered this to be at odds with the transfer being “exempt” and suggest that as the Registers of Scotland maintain both the Land and Sasine Property Registers and the Register of Community Interests in Land, it would be sufficient to include a declaration in the disposition detailing the exemption rather than placing what they consider to be an unnecessary additional burden on the owner to notify.

⁷⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 25.

⁷⁹ Written submission. Scottish Land and Estates.

⁸⁰ Written submission. Historic Houses Association for Scotland.

⁸¹ Written submission. Community Land Advisory Service.

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.

176. The issue of prior options relates to the scenario where, at the date Ministers receive an application for registration of a community interest, the landowner has already entered into a binding option agreement with a third party, under which that party may elect, at some future point, to buy the land.

177. The Community Land Advisory Service highlighted contradictions in the 2003 Act which it considered appear to be resolved by the Bill which, in its view, puts beyond any question that a prior option “trumps” a community interest application. In its written submission it states—

“.. this is the wrong policy choice; ... it should be possible for Ministers to consider whether, in the given circumstances, a community interest may be registered over land subject to a prior option.”⁸²

178. Other stakeholders raised concerns with respect to the possibility of landowners granting option agreement in order to thwart a potential community purchase. Helensburgh Community Woodland Group stated—

“we are concerned that there are still too many opportunities within the Bill in its current form that enables landowners/property owners to avoid the community’s ability to register/lease or buy. For example, there exists an option for owners to grant a ten year option to purchase to their siblings, children or other family members. If this type of loophole is not removed it will only frustrate the community right to buy process and ultimately lead to the Bill having to be amended.”⁸³

179. Other stakeholders took a different view on the issue of options. The Scottish Property Federation welcomed the inclusion of consideration of option agreements within the Bill but stated “we believe that other pre-agreed rights over the land that may be extant between the landowner and a third party should also be considered by Ministers.”⁸⁴

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.

⁸² Written submission. Community Land Advisory Service.

⁸³ Written submission. Helensburgh Community Woodland Group.

⁸⁴ Written submission. Scottish Property Federation.

Approval of members of community to buy land (section 36)

181. Section 36 removes the reference to at least half of the members of the community voting and provides that the requirement is met if the proportion of the members of the community who voted is sufficient to justify the community body proceeding to buy the land.

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.

Appointment of person to conduct ballot on proposal to buy land (section 37)

183. Section 37 inserts a new section 51A into the 2003 Act. It provides for an independent balloter to undertake the community ballot. The Policy Memorandum states that—

“Scottish Ministers [will] arrange for this to be conducted by an independent third party, and [...] meet the cost of this, making the community right-to-buy process easier for community bodies.”⁸⁵

184. Requirements on Ministers include providing the balloter with a copy of the application and other information as prescribed in regulations. This must be done within 28 days of the valuer being appointed. The community body is also required to provide the balloter with wording for the proposition that they buy the land, together with other information as set out in the regulations within seven days of receiving notification of the value of the land.

185. HIE suggested that, as much of the information will already have been submitted to Ministers as part of the application process and as Ministers supply background information to the balloter, it did not see merits in this subsection and stated it was “... not persuaded of the need for a balloter to hold this information as the balloter’s role is solely to undertake the ballot.”⁸⁶

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.

187. The Community Land Advisory Service suggested that, in relation to section 37(4)(b)—

⁸⁵ Policy Memorandum. Paragraph 63.

⁸⁶ Written submission. Highlands and Islands Enterprise.

“Given the Bill intends to make it clear that the right to buy can be exercised in relation to separate tenements, I think that the requirement to affix a notice to the land needs to be relaxed for those cases...”⁸⁷

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.

Approval of right-to-buy application, ballot and payment (sections 38 – 42)

189. Sections 38 – 42 relate to the information Ministers must take into account when deciding whether to approve a community body’s exercise of the right-to-buy and relates to the provision of information and evidence relating to ballot results; Ministerial powers to review whether ballots have been properly conducted; the timescale for the conduct of the ballot; and the timescale for payment by the community body.

190. Both Scottish Land and Estates⁸⁸ and the Historic Houses Association Scotland⁸⁹ suggest that as the ballot is at the initiation of the community body, the community body should meet the expenses of this rather than the public purse.

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.

Views on representations under section 60 of the 2003 Act (section 43)

192. Section 43 amends section 60 of the 2003 Act, which requires the valuer to invite the landowner and the community body to comment on issues that may have an impact on the valuation. This inserts a new subsection (1A) into section 60 of the 2003 Act, which requires the valuer to pass on any written representations about the value of the land (whether by the landowner of the community body) to the other party and invite counter representations from that party. These views must then be considered while undertaking the valuation. It is believed that this process will increase confidence in the valuation.

193. The Policy Memorandum states that the Bill gives Ministers discretion to allow them to recover the cost of the independent valuation from the landowner where the landowner has withdrawn the land from sale after the valuer has been appointed, thus deterring landowners from allowing the process to proceed where land is not genuinely being offered for sale.⁹⁰

⁸⁷ Written submission. Community Land Advisory Service.

⁸⁸ Written submission. Scottish Land and Estates.

⁸⁹ Written submission. Historic Houses Association Scotland.

⁹⁰ Policy Memorandum. Paragraph 63.

194. The Committee considers that the requirement on the valuer to consider the views of both parties when undertaking the valuation should increase confidence in the process.

Circumstances where expenses of valuation are to be met by the owner of the land (section 44)

195. Section 44 inserts a new section 60A into the 2003 Act. It provides for certain circumstances where Ministers may require the landowner to pay the expenses of Ministers in connection with the valuation. This also provides landowners with a right of appeal.

196. The Historic Houses Association for Scotland⁹¹ and Scottish Land and Estates⁹² raised concerns in relation to section 44. In particular, they highlighted that under community right-to-buy an owner has a right to withdraw his or her land from a sale to a community body after the right-to-buy has been activated, provided the appropriate notification has been given. They sought comfort that this section would not be used arbitrarily to penalise a landowner who, for a variety of reasons (such as where family or financial circumstances of the landowner change or where the land is held in trust, not all of the trustees being made aware of the sale) decide not to proceed with the sale. They sought further clarification on the criteria that would form the basis for Ministers' decisions on recovery of expenses. They suggested, as did Brodies in its written submission,⁹³ that Ministers should exercise their discretion with care.

197. Some stakeholders, including the Community Land Advisory Service, raised concerns in relation to the basis of the Minister's decision. Specifically, stakeholders sought further clarification on the criteria which would form the basis of that decision and highlighted the potentially adverse effects on land owners, who might be pursuing long term development proposals.⁹⁴

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.

Rights of appeal, calculation of time periods and provision of Information (sections 45 – 47)

199. Sections 45 – 47 relate to rights of appeal to the sheriff; calculating certain time periods in relation to community right to buy; and the provision of information to Ministers to enable monitoring and evaluation of any impacts that the right-to-buy under Part 2 of the 2003 Act has had or may have.

⁹¹ Written submission. Historic Houses Association for Scotland.

⁹² Written submission. Scottish Land and Estates.

⁹³ Written submission. Brodies LLP.

⁹⁴ Written submission. Pinsett Masons LLP.

200. The Community Land Advisory Service⁹⁵ commented on section 47 (the proposed new section 67A of the 2003 Act) highlighting that some periods specified in the revised 2003 Act would include public and local holidays and some would not and this could potentially cause confusion and lead to mistakes.

201. The Committee welcomes the provisions that support effective monitoring and evaluation of the impact of the community right-to-buy provisions.

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.

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

203. The existing community right to buy provisions under Part 2 of the 2003 Act allow a rural community to register an interest in land at any time. However a community body can only buy the land if the owner willingly decides to sell. As outlined in paragraph 102, section 27 removes the restriction on rural land and communities. The Policy Memorandum 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.”⁹⁶

204. Section 48 of the Bill inserts a new Part 3A into the 2003 Act to give communities a right to buy land that is wholly or mainly abandoned or neglected, for the purposes of the sustainable development of that land, where there is no willing seller. Where Ministers approve the application, the owner will be required to transfer the land to the community body, which will be required to pay the market value for the land. The procedure for Part 3A is based on the procedure in Part 3 of the 2003 Land Reform Act, which gives crofting communities an absolute right to buy and is not dependent on there being a willing seller. The provisions in the proposed Part 3A as inserted by section 48 are summarised below.

Meaning of Land (Section 97B)

205. The new section 97B of the 2003 Act defines “land” as including “bridges and other structures built on or over land, inland waters, canals and the foreshore” (i.e. land between the high and low water marks of ordinary spring tides). The definition does not include salmon and mineral rights.

⁹⁵ Written submission. Community Land Advisory Service.

⁹⁶ Policy Memorandum. Paragraph 65.

Eligible land (Section 97C)

- “The new section 97C of the 2003 Act defines eligible land as land which is, in the opinion of Ministers, “Wholly or mainly abandoned or neglected”. Factors which Ministers must have regard to when deciding whether land is eligible will be set out in regulations. Land which is not eligible includes —
- land on which there is an individual’s home, though this can be subject to exceptions set out in regulations;
- land pertaining to an individual’s home as may be set out in regulations;
- eligible croft land (as defined in section 68 of the 2003 Act) or croft land which is occupied or worked by its owner or members of their family;
- certain land that is owned by the Crown (because no owner or heir to the previous owner exists or can be identified); or
- land of such other descriptions that Ministers may set out in regulations.

206. The Policy Memorandum suggests that matters which could be considered in relation to whether land is abandoned or neglected include—

“The physical condition of the land or building; its current use (or non-use); any detrimental economic or environmental impact on the local area; and any failure by the landowner to comply with regulatory requirements. Ministers would also need to consider any environmental, planning or historic designations affecting the land and buildings, for example if there are any restrictions on its use or development relating to conservation purposes.”⁹⁷

207. Many stakeholders supported the introduction of the new power extending the community right-to-buy where there is no willing seller, but the majority who commented on this provision viewed it as a power of last resort, to be exercised when other methods and negotiations had failed. They considered that the existence of the power would, however, have an important role in incentivising negotiation. Stakeholders such as the Community Woodland Association⁹⁸ and Community Land Scotland⁹⁹ suggested that this proposal responds to a weakness in the 2003 Act, that is, even if it were in the public interest, there is no means by which a community can acquire land unless it comes on the open market. In their view, the new provision means that the matter can now be considered.

208. Whilst stakeholders were broadly supportive of the introduction of this power in principle, many questioned whether the provisions, as drafted, effectively meet the policy objectives. Many also highlighted significant concerns with respect to the definition of abandonment and neglect and the additional requirements resulting from the definition; the scope of eligible land; and the provision for exceptions in relation to an individual’s home. Many stakeholders raised practical

⁹⁷ Policy Memorandum. Paragraph 68.

⁹⁸ Written submission. Community Woodland Association.

⁹⁹ Written submission. Community Land Scotland.

concerns in relation to the operation of the provisions. Community Land Scotland¹⁰⁰ and the Community Woodland Association¹⁰¹ stated that, in their view, the significant qualifications on the new right would probably make it impossible to exercise in practice. The Community Woodland Association stated—

“The bar is being set too high, there are too many obstacles in the way and there are clear opportunities for avoidance on the part of landowners. We are concerned that this requirement is overly limiting and whilst it may be possible to demonstrate this requirement is met for buildings we do not believe it will be workable in practice with respect to woodlands and other extensive land holdings.”¹⁰²

209. Highland Council shared those concerns, suggesting that section 48 appears to introduce a significantly higher barrier to community ownership than currently exists. It had particular concerns that the requirement for an interested community to demonstrate that land had been abandoned, particularly in a rural setting, would be very challenging indeed.”¹⁰³

210. Community Land Scotland also stated that 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 these new powers.¹⁰⁴

211. John Watt told the Committee that he would prefer the Bill to mention “fulfilling the greatest potential for sustainable development”, rather than including a requirement that land should be proven to be “abandoned or neglected.”¹⁰⁵

212. Some also questioned, given the stated policy intention, whether section 97C should include a further provision to the effect that eligible land would be land which, if sold to a community body, would contribute to the achievement of greater diversity of ownership of land in Scotland.

The public interest and sustainability tests

213. The Committee explored the views of stakeholders on the public interest and sustainable development tests. The Committee heard evidence about the operation of the community right-to-buy to date and concerns that tying the Part 3A route to community ownership of land solely to the concept of abandonment or neglect is too limiting as community ownership of land is principally motivated by communities considering barriers to sustainable development of their place. There was discussion that, had these provisions existed at the time of the Eigg case, the community might not have been able to successfully argue a case for community ownership.

¹⁰⁰ Written submission. Community Land Scotland.

¹⁰¹ Written submission. Community Woodland Association.

¹⁰² Written submission. Community Woodland Association.

¹⁰³ Written submission. Highland Council.

¹⁰⁴ Written Submission. Community Land Scotland.

¹⁰⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 29.

214. In oral evidence, Peter Peacock stated—

“Sustainable development is defined in three ways. That is the problem at the heart of the definition of “abandoned and neglected”: it deals with one of the three definitions of sustainable development but not necessarily with the other two...The difficulty with sticking to a definition of abandonment and neglect is that it appears to relate to the physical construct of the land rather than to sustainable development. The whole policy purpose of the bill, and of the original 2003 act, is about furthering sustainable development. There is a bit of a trap here, given the way in which sustainable development is currently defined. The issue can be sorted—for example, it would be possible to have a third criterion. If the aim of the requirement for a building to be proven to be “abandoned and neglected” ...the bill could specify that a building can also be proven to be in need of sustainable or sustained development. That would allow the social and economic considerations to be taken into account”.¹⁰⁶

215. 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.

216. 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.

217. 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.

218. 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.¹⁰⁷

¹⁰⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 26 November 2014, Col 59.

¹⁰⁷ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.

219. In the absence of an unambiguous and acceptable definition¹⁰⁸ 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.

220. The Committee sets out its detailed consideration of the evidence in relation to definitions of abandonment and neglect in the following paragraphs.

Definitions of abandonment and neglect

221. Many stakeholders, including Scottish Environment Protection Agency (SEPA); the Law Society of Scotland; Community Land Scotland; Scottish Land and Estates; the Community Land Advisory Service; Brodies LLP; the National Farmers Union Scotland; and West Dunbartonshire Council, raised significant concerns in relation to how land would be identified as being abandoned or neglected.

222. The Law Society of Scotland stated—

“The lack of a definition for abandoned or neglected land gives rise to considerable uncertainty in relation to what land would be within the scope of section 97C. The Society believes that there should be a proper definition of abandoned or neglected land”.¹⁰⁹

223. Scottish Land and Estates¹¹⁰ considered that an owner is entitled to know, prior to the Bill becoming law, what is meant by the separate terms “abandoned” and “neglected”. This concern was shared by the Scottish Community Alliance which stated—

“...We would also support the view that more clarity is needed to determine what is meant by abandoned and neglected land....Given that these provisions could result in an asset owner being deprived of his/her property against their wishes, it is very important that there is absolute clarity around the circumstances in which this would be permissible”.¹¹¹

224. Community Land Advisory Service raised the question of fairness to landowners and, in its written submission, stated—

¹⁰⁸ Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 220 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.

¹⁰⁹ Written submission. Law Society of Scotland.

¹¹⁰ Written submission. Scottish Land and Estates.

¹¹¹ Written submission. Scottish Community Alliance.

“that more consultation and discussion is needed on the sorts of land susceptible to the proposed right to buy. This should include consideration of (1) land land-banked for future development, (2) farmland left fallow as a matter of good agricultural practice and (3) spaces deliberately allowed to go wild for good environmental reasons”.¹¹²

225. Malcolm Combe stated that the word “abandoned” is “sub-optimal, because it has a very specific meaning in Scots private law” i.e. it is used in a situation where an owner has actively sought to walk away from an item of property. “Whilst land cannot be cast away in quite the same manner, an owner may seek to disclaim land. This was most recently witnessed in the case *SEPA v Joint Liquidators of Scottish Coal* (2014 SLT 259)”.

226. Mr Combe discussed whether an appropriate synonym for “abandoned” could be found and concluded that—

“The Committee should consider carefully whether “abandoned” is appropriate. One drastic solution might be to remove “abandoned” entirely, leaving the legislation to relate to “wholly or mainly neglected land”.¹¹³

227. This concern was shared by other stakeholders, including the Historic Houses Association for Scotland, who suggested that “mainly abandoned” did not appear to be a legally competent term.¹¹⁴

228. The submission from the Community Land Advisory Service raised concerns that the definition of abandoned and neglected land was to be defined by future statutory instrument, subject to the negative procedure. It also raised concerns in relation to potential disputes that might arise should the definition be left to a later date and set out in subordinate legislation, highlighting possible adverse consequences for the land market.

229. The Church of Scotland General Trustees stated—

“...While there are clear difficulties in setting out criteria to define “abandoned or neglected”, it appears to the Trustees that the definition of these terms is at the heart of this element of the proposals. Without statutory definition of these terms, Parliament is being asked to approve a concept, rather than scrutinise the specific terms and application of the legislation with the danger of unintended consequences. The Trustees submit that the terms “abandoned or neglected” should be defined within the primary legislation and should take into account: a property owner’s right to peaceful enjoyment of his or her possessions...”¹¹⁵

230. Scottish Land and Estates commented on the human rights issues associated with these provisions and stated—

¹¹² Written submission. Community Alliance.

¹¹³ Written submission. Malcolm Combe.

¹¹⁴ Written submission. Historic Houses Association for Scotland.

¹¹⁵ Written submission. Church of Scotland General Trustees.

“In terms of the process set out in the Bill, we believe that deprivation of ownership is not the appropriate final outcome and it is questionable in ECHR terms whether this is in fact a proportionate response. Where there is “abandoned and neglected” land, the key issue the Bill requires to address is land use, not land ownership.”¹¹⁶

231. In providing oral evidence to the Committee, Dave Thomson, from the Scottish Government Bill Team, said that he agreed that the definition should be on the face of the Bill, adding that—

“I think that matters that the Minister would have to consider in deciding whether that definition applies will be followed up within regulation rather than in the Bill, but you are right that the definition should be in the Bill itself. We are still actively considering exactly what the definition should be, to ensure that we get it right.”¹¹⁷

232. In response to the discussion of the Committee’s concerns in relation to abandoned and neglected land, the Cabinet Secretary said he would reflect on the issues raised with the Committee and consider whether there is a need for further clarity.

233. Notwithstanding the Committee’s recommendation in paragraph 220, with respect to the terms wholly or mainly abandoned or neglected land, which takes precedence,¹¹⁸¹¹⁹ 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;**
- **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;**
- **if prescribed matters in relation to eligible land are to be set out in regulation these regulations should be laid under the affirmative procedure; and**
- **owners and communities are entitled to know, prior to the Bill becoming law, what is meant by the separate terms. The Committee**

¹¹⁶ Written submission. Scottish Land and Estates.

¹¹⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 19 November 2014, Col 54.

¹¹⁸ Alex Fergusson MSP and Jim Hume MSP dissent from paragraphs 216 to 219.

¹¹⁹ Sarah Boyack MSP and Claudia Beamish MSP dissent from paragraph 220 on the basis of the evidence to the Committee which suggested that the requirement on communities to demonstrate that land is neglected or abandoned is likely to present a barrier which would undermine the aims of the Bill.

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.

Impact of the provisions in urban and rural areas

234. The Committee heard from stakeholders that there may be a differentiation in the circumstances of urban and rural areas.

235. Some stakeholders including Scottish Land and Estates¹²⁰ and the Historic Houses Association Scotland¹²¹ raised the question as to whether the provisions relating to abandoned and neglected land should apply only in an urban context if the focus was on small parcels of land which prevent sustainable development or cause blight.

236. 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.

237. The National Farmers Union of Scotland (NFUS) was concerned that some agricultural land may be out of “regular” use for periods of time and may, as a result, be subject to these provisions. It considered that where land is classified as agricultural land it should be exempt from this provision unless it is proven that it fails to meet “good agricultural and environmental condition”.¹²²

238. 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.

Timescales

239. Some stakeholders, including the NFUS and Community Land Scotland suggested that consideration be given to the timescales in which land would be considered to be abandoned or neglected and proposed that a minimum timescale be set out.¹²³¹²⁴

240. 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

¹²⁰ Written submission. Scottish Land and Estates.

¹²¹ Written submission. Historic Houses Association Scotland.

¹²² Written submission. National Farmers Union Scotland.

¹²³ Written submission. National Farmers Union Scotland.

¹²⁴ Written submission. Community Land Scotland.

determined to be abandoned and neglected and bring forward amendments to identify timescales in relation to this provision at stage 2.

Other potential impacts of the provisions

241. Brodies LLP suggested that safeguards would be required to ensure that the provisions are not used to obstruct the development plans of competitors.

242. The Scottish Property Federation¹²⁵ highlighted significant concerns in relation to land that may be part of a complex development process (possibly comprising several small plots or buildings) and the impact of potential uncertainty on investor decisions. It also raised concerns in relation to land owned by an entity in administration or other insolvency process connected with the land and suggested that there was a need for appropriate and clear policy in relation to this issue.

243. 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.

244. Stakeholders sought clarification as to whether, in cases where some parts of a land holding could be considered to be either wholly or mainly (significantly) abandoned or neglected, whether the provisions would apply to those parts only or to the whole land holding. This issue was also raised in relation to the rural context and with respect to large estates.

245. 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.

Management of land

246. The Committee received written evidence and heard oral evidence from Holmehill Community Buyout, which stated that—

“... we are concerned that the concept as presented in the Bill will be of limited value in many cases. There may be cases where it will be of real use to communities so we are not suggesting that it is removed, rather that it is strengthened. The key issue is not that the land is un-managed, but how it is managed...consequently we consider that the Community Empowerment Bill should include the ability for the local community to take ownership of land

¹²⁵ Written submission. Scottish Property Federation.

that is not being used in line with the defined planning designation and where there is a clear community need...”¹²⁶

247. Scottish Land and Estates and the Historic Houses Association for Scotland also raised concerns in relation to the importance of land use rather than land ownership. They raised the issue facing owners of land under agricultural tenancies, both stating in their written submission that (they)—

“...may have very limited control over the utilisation of the leased land and short of going through time consuming and potentially costly court processes may be unable to rectify this. It would seem inequitable for land to be compulsorily acquired, where the owner is not actually responsible for the perceived absence of activity or poor management.”^{127 128}

248. 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.

249. Concerns in relation to land that is intended for conservation purposes were raised by Scottish Natural Heritage, the National Trust for Scotland, the Scottish Wildlife Trust and others.

250. Scottish Natural Heritage, referred to paragraph 73 of the *Consultation on the Community Empowerment (Scotland) Bill 2013*¹²⁹ which stated that “land which is intended for recognised conservation purposes would not be considered to be neglected or abandoned”. It suggests that this does not seem to be reflected in Section 48 of the Bill, and states—

“In our response to the consultation we commented that the term *neglected or abandoned land* should be defined so as to exclude land that is delivering wider public goods in the form of ecosystem services despite it not being “actively” managed. The absence of active management is not necessarily a sign of “abandonment” or “neglect”. For example, areas of peat-land might be helping to deliver carbon capture which is part of the Scottish Government’s response to climate change. Owning and managing land for nature conservation is an important land use. We would welcome the legislation reflecting the statement made in the consultation on the draft Bill”.¹³⁰

251. Similarly, the National Trust for Scotland highlighted its concerns that although the Policy Memorandum refers to land or buildings held for conservation—

¹²⁶ Written submission. Holmehill Community Buyout.

¹²⁷ Written submission. Scottish Land and Estates.

¹²⁸ Written submission. Historic Houses Association for Scotland.

¹²⁹ Scottish Government (2013). Consultation on the Community Empowerment (Scotland) Bill. Available at: <http://www.scotland.gov.uk/Resource/0043/00437584.pdf>.

¹³⁰ Written submission. Scottish Natural Heritage.

“...there is nothing in the Bill which would suggest that land or buildings held for conservation could not be considered to be abandoned or neglected. The Scottish Wildlife Trust¹³¹ and the National Trust for Scotland would like all land held for conservation to be excluded from the statutory provisions. In addition the National Trust for Scotland requested that the Trust’s inalienable land should be deemed to be held for conservation. “Should this not be accepted by the Committee, we would suggest that the Scottish Ministers should have the power to reject an application where land is held for conservation and the Trust’s inalienable land should be presumed or (preferably) deemed to be held for conservation. If the Trust’s inalienable land is not absolutely excluded from the statutory provisions, then we would seek a special parliamentary process to be built into the legislation to allow the Trust to appeal any compulsory sale order (in the same form as in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 and the Crofters Acts...”¹³²

252. SEPA also noted that there could be cases where abandoned or neglected land could have a high value in terms of the ecosystem services it offers such as supporting biodiversity and flood risk management. It highlighted the importance of having a robust evidence base to inform decision making and suggested that both the land valuation and processes of determining requests for transfer of land should take account of ecosystem value in a systematic way. SEPA also suggests that there may be cases where abandoned or neglected land is partly or wholly contaminated and may not be suited to the use that the community would like to see. SEPA suggested that there was a need for appropriate mechanisms to ensure that communities had access to expert advice and support.¹³³

253. The Historic Houses Association for Scotland stated that—

“...the absence of active management is not necessarily a sign of either “abandonment” or “neglect”. Land may be delivering wider public good in the form of ecosystem services despite not being actively managed. Active management of itself can therefore not be properly used as a term in defining abandonment and neglect. Biodiversity, carbon capture, recreation and cultural value may all be components of different sites and the Bill as drafted does not take into account such circumstances”.¹³⁴

254. 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).

¹³¹ Written submission. Scottish Wildlife Trust

¹³² Written submission. National Trust for Scotland.

¹³³ Written submission. Scottish Environment Protection Agency.

¹³⁴ Written submission. Historic Houses Association for Scotland.

255. 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.

256. 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.

Eligible land – provisions with respect to an individual’s home

257. The Delegated Powers and Law Reform (DPLR) Committee reported on the Delegated Powers Memorandum and made a number of specific comments in relation to this, as well as some general observations about the quality of responses received from Scottish Government officials and the detail of the Bill. One of the DPLR Committee’s main concerns relates 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”. In its report the DPLR Committee stated that it “[...] remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development”.¹³⁵

258. Brodies LLP¹³⁶ and the Community Land Advisory Service¹³⁷ also raised concerns in relation to the exclusion of an individual’s home and, in its written evidence, Brodies stated “We are however wary that this exclusion is also subject to further regulation”.

259. The Committee raised the concerns of the DPLR Committee directly with the Cabinet Secretary; sought information on the thinking behind the power; asked for examples that demonstrate how the power might be used in practice; and questioned how the power was intended to be used.

¹³⁵ Scottish Parliament Delegated Powers and Law Reform Committee. 63rd Report 2014, Community Empowerment (Scotland) Bill at Stage 1. Available at: http://www.scottish.parliament.uk/S4_SubordinateLegislationCommittee/Reports/su-R14-63w.pdf

¹³⁶ Written submission. Brodies LLP.

¹³⁷ Written submission. Community Land Advisory Service.

260. No detailed information on the thinking behind the power or examples of how it might be used in practice or how it was intended to be used were offered. The Cabinet Secretary stated that he was aware of concerns in relation to the power and undertook to review those concerns but stated “We will still have to have the power to exclude homes...”¹³⁸.

261. 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.

262. 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.

Bona vacantia land and Crown land

263. Some stakeholders sought clarity as to why bona vacantia¹³⁹ land is excluded from eligible land, particularly when related to the need to identify ownership of the land, which may not always be possible. Clarity was also sought on why Crown land was excluded.

264. 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.

Queen’s and Lord Treasurers Remembrancer (QLTR)

265. The Community Land Advisory Service questioned the proposed new section 97C(3) of the 2003 Act, which states that land administered by the Queen’s and Lord Treasurers Remembrancer (QLTR) is an exception to the general rule.¹⁴⁰

266. 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

¹³⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report, 10 December 2014*, Col 14.

¹³⁹ bona vacantia means vacant goods and is the name given to ownerless property which passes to the crown.

¹⁴⁰ Written submission. Community Land Advisory Service.

Government reflect on this and, if appropriate, bring forward amendments at stage 2 to remove this power of exception.

Part 3A community bodies (section 97D)

267. The new section 97D outlines the requirements which must be met by a body be eligible to purchase land under Part 3A of the 2003 Act.

268. Subsection (1) specifies that a Part 3A community body must be a company limited by guarantee. It also lists the requirements which must be included in the company's articles of association. In terms of subsection (2) Ministers have discretion over the minimum number of members a Part 3A community body must have. Ministers must also be satisfied that the body's main purpose is consistent with furthering the achievement of sustainable development.

269. Subsection (5)(a) sets out that the articles of association must define the community to which it relates by reference to a postcode unit (or units) and/or a type of area which Ministers set out in regulation. The community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers in regulation. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations.

270. There are additional supplementary provisions to section 97D – a Part 3A community body cannot change its memorandum or articles of association without prior written consent from Ministers, while the land purchased under Part 3A of the 2003 Act remains in its ownership. Ministers would have the power to acquire land should the community body no longer be entitled to buy the land, should it continue to be considered to be wholly or mainly abandoned or neglected.

271. The Community Land Advisory Service states that—

“The types of body permitted to acquire a Part 3A right to buy should be the same as those permitted to acquire a Part 2 right to buy under Part 2 as proposed to be amended by the Bill. Accordingly this provision should be amended to permit SCIOs and other bodies prescribed by statutory instrument to be Part 3A community bodies”.¹⁴¹

272. Both Scottish Land and Estates and the Historic Houses Association for Scotland stated that they were unclear (in terms of the proposed Section 97D) why the community body for this part of the Act effectively required to be a company limited by guarantee and suggested that there should be parity with the new provisions for “normal community right-to-buy”.¹⁴²¹⁴³

273. 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.

¹⁴¹ Written submission. Community Land Advisory Service.

¹⁴² Written submission. Scottish Land and Estates.

¹⁴³ Written submission. Historic Houses Association for Scotland.

The Committee therefore recommends that the Scottish Government bring forward amendments at stage 2 to address the current inconsistency.

Section 97E(1) of the 2003 Act

274. Some stakeholders, including the Community Land Advisory Service, suggested that this provision be amended to refer to constitutions as well as to memoranda and articles.

275. 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.

Register of community interests in abandoned or neglected land (section 97F)

276. The new section 97F of the 2003 Act provides for the creation of a Register of Community Interests in Abandoned or Neglected land, to be set up and maintained by the Registers of Scotland.

277. The Community Land Advisory Service suggested that such a register would be unnecessary, as in its view, the proposed Part 3A right to buy is absolute and not pre-emptive. When the Land Registration etc (Scotland) Act 2012 has been fully commenced, it argued, the Keeper of the Registers of Scotland will be empowered to unilaterally register any unregistered parcel and relevant information would be disclosed in routine conveyancing searches.¹⁴⁴

278. 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.

Right to buy: application for consent – Section 97G

279. The new section 97G relates to the process of applying to exercise the right to buy land under Part 3A, and provides that this can—

- only be exercised by a Part 3A community body;
- only be exercised with Ministers' consent following a written application by the community body; and
- be exercised on multiple holdings, providing that separate applications have been made for each holding.

280. An application must set out whom the owner of the land is and any creditor in a standard security with a right to sell the land or any part of it. The required form of the application and accompanying information will be specified in regulations.

281. A Part 3A community body must also list in the application why it believes that its proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development of land, and the reasons

¹⁴⁴ Written submission. Community Land Advisory Service.

why it considers the land to be wholly or mainly abandoned or neglected. This application must also be sent to the land owner and any creditor. On the invitation of Ministers, owners and creditors would then have a 60 day period to provide written comments on the application. There is also a 60 day period for public notice and for receipt of the comments from the community body which is provided with all views received by the Minister.

282. In considering whether or not to give consent to the application, Ministers must have regard to all views received in relation to the application and must decline to consider an application that does not comply with the requirements of the new section 97G, is incomplete, or where Ministers are otherwise bound to reject it.

Identification of the owner

283. Many stakeholders expressed concerns in relation to the provision requiring community bodies to identify the landowner. Jon Hollingdale stated—

“As the 2003 act stands, the current community right-to-buy provides for communities to be able to put a registration on land without knowing who the owner is, although they have to demonstrate, and the Minister has to accept, that they have taken reasonable steps to find out who the owner is. If it is not possible to find out, a registration can still stand. At the very least, there ought to be a similar mechanism in the Community Empowerment (Scotland) Bill. It strikes against the whole abandonment issue. If the land is abandoned, that suggests that we would not know who the owner was because they had run away”.¹⁴⁵

284. Concerns were also expressed by the Community Land Advisory Service and others in relation to the practical difficulties of tracing owners, as ownership records may not provide information on the identity and contact details of a current owner, making it difficult or impossible to trace or to make contact with them. The Community Land Advisory Service referred to their experience stating it would find it difficult to comply with the requirements of this provision. It also raised concerns that in a situation where the owner can be identified but may be an adult with incapacity or a lapsed trust with no surviving trustees capable of acting.¹⁴⁶

285. In oral evidence to the Committee, members of the Bill team discussed the absolute requirement to identify the owner and suggested that there was an alternative procedure whereby if the owner could not be found and the land were declared bona vacantia, the Queen’s and Lord Treasurer’s Remembrancer could be approached to purchase the land.¹⁴⁷

286. 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.

¹⁴⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 39.

¹⁴⁶ Written submission. Community Land Advisory Service.

¹⁴⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 19 November 2014, Cols 54-55.

287. 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.

288. In relation to the proposed section 97 G (10) some stakeholders considered that the information to be provided by the owner should include information about the effect on the owner's funder and/or the existence of any leases or other contractual commitments which bind the owner in relation to the land and sought further clarity on this, particularly as such contracts can be rendered void by section 57 (5).

289. In its written submission, Brodies LLP proposed—

“In terms of Section 97G(11) Bill the community body is to receive copies of all views submitted to the Ministers. The landowner should also be entitled to see these views and make counter representations if necessary.”¹⁴⁸

290. **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.**

Crichel Down rules

291. Where land is acquired by, or is under the threat of, compulsory purchase, a non-statutory arrangement known as the Crichel Down Rules provide that surplus land should be offered back to former owners and their successors.¹⁴⁹ Some stakeholders considered that the equivalent to Crichel Down Rules should apply where land acquired under the amended 2003 Act is not used for the purpose for which it was acquired. It was suggested that the former owner or their successors should be entitled to first refusal if the land is no longer used by the community for the intended purpose.¹⁵⁰ Others¹⁵¹ commented that the Bill was silent on this issue and suggested that it would be helpful to have some clarity on this aspect of the community right to buy process.

292. The question as to what happens to a community body asset (including liabilities and responsibilities) where the body ceases to exist or is unable to continue to function was raised by stakeholders, including the Scottish Property Federation. Stakeholders questioned whether this would fall to Scottish Ministers.

¹⁴⁸ Written submission. Brodies LLP.

¹⁴⁹ The procedure for the resale of the land is set out in Planning Circular 5-2001 in the Scottish Government Planning Series (Disposal of surplus government land – the Crichel Down Rules).

¹⁵⁰ Pinsent Masons LLP, submission number 50.

¹⁵¹ Written submission. Scottish Property Federation.

293. The Finance Committee also invited the RACCE Committee to seek clarification of how the expansion of community right-to-buy might interact with the Crichel Down Rules.¹⁵²

294. The Committee raised the question of the Crichel Down Rules with the Cabinet Secretary, who stated that—

“...it will depend on what is in the public interest. The rules do not preclude a community having the right to buy, but it would be considered on a case by case basis whether what the community proposes is in the public interest.”¹⁵³

295. The Committee welcomes the clarification from the Cabinet Secretary that, as the Crichel 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.

296. 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.

Mapping requirements

297. Many stakeholders such as the Community Woodlands Association and Community Land Scotland raised concerns in relation to the mapping requirements for community right-to-buy, which, in their view, are widely considered to be excessive. They suggested that there was a need to address streamlining the mapping process and aligning the eligibility criteria with those for Parts 2 and 3A of the amended Act.^{154 155}

298. John Randall suggested that there was a need to simplify the information requirements where land or a lease was to be acquired. Highland Council shared this view and highlighted that this issue was considered by the Land Reform Review Group. John Randall stated—

“there seems no logical or functional rationale for being required to provide the following details: a map and written description showing not only the

¹⁵² Scottish Parliament Finance Committee. Report on the Community Empowerment (Scotland) Bill. Available at: http://www.scottish.parliament.uk/S4_FinanceCommittee/Reports/fiR14-CommunityEmpowermentReport.pdf.

¹⁵³ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 12.

¹⁵⁴ Written submission. Community Woodland Association.

¹⁵⁵ Written submission. Community Land Scotland.

boundary of the land or lease to be acquired, but also all sewers, pipes, lines, watercourses or other conduits, and fences, dykes, ditches or other boundaries. This goes far beyond what is required in other land or lease transactions and there seems no functional reason to require this information. It is particularly onerous when the area to be purchased extends to several thousand hectares. Yet similar detailed requirements are proposed in Section 48 of the Bill (Clause 7G(6)(d) and (f) for the new proposed Part 3A”.

299. He also had concerns in relation to the requirement for inclusion of all postcodes and OS 1km grid squares to be included in the land or lease area to be published, particularly where the area extended to several thousand acres and highlighted the possibilities for technical challenge due to inadvertent omissions. He stated that in his view—

“...in relation to the mapping requirements, the new Part 3A is modelled on the Part 3 of the 2003 Act, and this “goes far beyond what is required in other land or lease transactions, and there seems no functional reason to require this information...”¹⁵⁶

300. 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.

Criteria for consent (section 97H)

301. The new section 97H sets out various criteria for consent. Ministers must be satisfied that applications meet the criteria. These are as follows—

- that the land a part 3A community body is proposing to buy is land which is eligible under the new section 97C of the 2003 Act;
- that the exercise of the right to buy by a Part 3A community body is in the public interest and that its plans for the land are compatible with furthering the achievement of sustainable development of the land;
- that, if continuing ownership of the eligible land by the current owner would be inconsistent with furthering the achievement of sustainable development of the land;
- that the owner of the land is not prevented from selling the land or is not under an obligation to sell the land to someone other than the Part 3A community body (Other than an obligation which is suspended by the regulations which are to be made by Ministers under the new section 97N(3));

¹⁵⁶ Written submission. John Randall.

- that a Part 3A community body meets the requirements in section 97D;
- that a significant number of the members of the community which the Part 3A community body represents have a connection with the land or the land is sufficiently near to land to which those members of the community have a connection;
- that the community which the Part 3A community body represents has approved the proposal to exercise the right to buy under Part 3A; and
- that the Part 3A community body has tried and failed to buy the land, other than by making an application under Part 3A.

Ownership inconsistent with the achievement of sustainable development

302. Some stakeholders raised concerns in relation to the requirement under section 97H; that Ministers must not consent to an application to buy by a community body unless they are satisfied “that, 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 the land”. Many considered that it would be difficult to prove this “as it requires proof of a negative as distinct from proof of a possibility” and that it goes much further than would be required in order to achieve a “fair balance” required by ECHR A1P1.

303. In its written submission, Community Land Scotland stated that this “appears a very high and most probably impossible hurdle to overcome and unnecessary to meet ECHR requirements”. It was of the view that the tests under the provisions that Ministers have to satisfy themselves that the land is eligible, that is that purchase by the community body is in the public interest and would be consistent with the achievement of sustainable development in relation to the land, were sufficient. Community Land Scotland highlighted that there was no equivalent of this requirement in Part 3 of the 2003 Act and in their view this further requirement was unnecessary.¹⁵⁷ This view was echoed by the Community Woodland Association¹⁵⁸. In oral evidence, Peter Peacock referred to this as “a killer clause.”¹⁵⁹

304. Evidence to the Committee suggested that, given that Ministers already have to satisfy themselves that the land is eligible land (i.e. abandoned or neglected) and that purchase by the community body is both in the public interest and compatible with furthering the achievement of sustainable development in relation to the land, this further test is either an unnecessary duplication or sets impossibly high hurdles. Stakeholders suggested that it would be difficult to see how the above requirement could ever be met. Stakeholders considered it implies that even if a community were able to show that the land was mainly neglected for the purpose of its sustainable development, and this was not in the public interest, if that owner could show that their continuing ownership was not of itself

¹⁵⁷ Written submission. Community Land Scotland.

¹⁵⁸ Written submission. Community Woodland Association.

¹⁵⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 26 November 2014, Co 61.

“inconsistent” with some level of sustainable development, the community’s application would require to be refused.

305. When questioned on the double test, the Cabinet Secretary stated he considered the approach of the double test to be sensible and continued to say—

“on the second part of the test – whether continuing ownership under the current arrangements from the existing owner will further sustainable development – I offer the reassurance that ministers will want evidence and proof from the existing owner...They will want evidence that things are happening, investments are being made, a plan is in the pipeline and people have been commissioned to bring the land out of neglect or abandonment.”¹⁶⁰

306. 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.

307. 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.

Community demonstration of trying and failing to purchase land

308. Some stakeholders considered that 97H(j) might benefit from clarification in guidance as to the circumstances under which it would be considered that a community had tried and failed to buy the land, for example to have made an offer.

309. 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.

310. Concerns were also raised in relation to the potential for landowners who, if minded to obstruct the process, could obfuscate ownership by selling or giving options on some or all of the land or by carrying out the bare minimum of management activity required to counter the abandoned or neglected criterion. This issue has been dealt with in paragraphs 176-180.

Ballot to indicate approval for the purposes of section 97H (section 97J)

311. The new section 97J sets out the requirements for a ballot to establish that a right to buy application by a Part 3A community body has the support of its

¹⁶⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 32.

community. A proposal to exercise a community right to buy will be deemed to have been approved by the relevant community if—

- the ballot takes place within the six-month period immediately preceding the date of the right to buy application;
- at least half of the community voted in the ballot or, where fewer than half of the members of the community voted, the proportion is sufficient to justify the community body proceeding to purchase the land; and
- the majority of the votes cast were in favour of making the application.

312. Further requirements are also set out, including that a Part 3 community body is responsible for the expense of conducting the ballot and that it must be conducted as set out by Ministers in regulations. These regulations should include calculating and publishing the number of eligible voters, turnout, and the number of votes cast for and against the proposition. Thereafter, the Part 3A community body has 21 days in which to notify Ministers of the result (in some circumstances this can be included with the application). Should the ballot not be conducted in accordance with regulations, the Part 3A community body's right-to-buy is extinguished.

313. Stakeholders raised concerns with regard to the timing of the valuation in relation to the ballot, specifically that under the current 2003 Act the community body is aware of the valuation at the time at which the ballot takes place. Stakeholders were concerned that, under the proposed provisions, at the time of the ballot communities will not have this information and therefore will not have complete information on the option on which they are voting and the valuation may subsequently turn out to be significantly higher than had been anticipated.¹⁶¹

314. 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.

315. Under the provisions of Part 3 of the 2003 Act, the Scottish Government is responsible for the expense of conducting the ballot. The new provisions propose to make the community body responsible for that cost. There was concern amongst stakeholders that this could cause issues for many communities, particularly for those more disadvantaged communities, which, in the absence of adequate financial support, might find it difficult to source the necessary funds to conduct the ballot.¹⁶²

316. The Community Land Advisory Service suggested that this provision should be modified in the same way as the equivalent provision in Part 2, in order to

¹⁶¹ Written submission. Anonymous.

¹⁶² Written submission. Anonymous.

provide that the ballot is to be conducted by an independent balloter appointed and paid for by Ministers.¹⁶³

317. 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.

318. Fife Community Partnership commented on the 50% threshold, stating—

“Groups wishing to undertake the Community Right-to-Buy only have access to the edited register whereby up to 30% of the electorate may not be included. This makes the initial 50% threshold difficult to achieve.”¹⁶⁴

319. 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.

Detailed procedural matters (Sections 97K – R)

320. The new sections 97K – R relate to detailed procedural matters. The Committee only comments on those sections where it has a view.

The right to buy same land exercisable by only one Part 3A community body (Section 97K)

321. The new section 97K provides for the situation where more than one Part 3A community body submits an application seeking to buy the same land. Where this occurs, Ministers will decide which application should be allowed to proceed, once they have considered all views and responses related to each application.

322. 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.

Consent conditions (Section 97L)

323. Section 97L enables Ministers to impose conditions on the consent to an application.

324. The National Trust for Scotland considered that this section should be explicit in stating that the conditions set could include the application of Conservation

¹⁶³ Written submission. Community Land Scotland.

¹⁶⁴ Written submission. Fife Community Safety Partnership.

Agreements or Conservation Burdens with a provision relating to conservation agreements similar to those in the Crofters (Scotland) Act 1993 (p.5).¹⁶⁵

325. 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.

Effect of Ministers' decision on the right to buy (Section 97N)

326. This section gives Ministers powers to make regulations prohibiting certain persons from transferring or otherwise dealing with the land in respect of which an application under section 97G has been made. It also provides that Ministers may make regulations to suspend rights over land in respect of which a Part 3A application has been made.

327. 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.

Completion of purchase (Section 97Q)

328. The new section 97Q of the 2003 Act deals with conveyancing practicalities relevant to the transfer of land following Ministers giving consent to a Part 3A community body to buy land.

329. The Law Society of Scotland noted that, in its view, this provides an opportunity for Ministers to impose statutory burdens and sought clarity as to what was envisaged. For example, what types of burdens and claw-back provisions should be put in place should the plans of the community body not be implemented?¹⁶⁶ Similarly, the Scottish Property Federation questioned what would happen were a community body to fail to deliver the proposed benefit within a reasonable period of time.¹⁶⁷

330. 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.

Assessment of the value of land (Section 97S)

¹⁶⁵ Written submission. National Trust for Scotland.

¹⁶⁶ Written submission. Law Society of Scotland.

¹⁶⁷ Written submission. Scottish Property Federation.

331. The new section 97S sets out the procedure for valuation of the land that a Part 3A community body wishes to buy. Ministers must, within seven days, appoint and pay for a qualified, independent, knowledgeable and experienced valuer, who will assess the market value of the land at that point, as well as take into account the views of the Part 3A community body and owner. This must be done within eight weeks of being appointed (unless Ministers specify otherwise).

332. However, unlike the new amendments to section 60 of the 2003 Act, where both the owner and the community body have rights to make comments on the other party's representations, there appears to be no such right in this case.

333. The Committee received a written submission highlighting that there may be situations in which the valuation has been agreed between the parties but the valuer may not arrive at the same valuation. The submission suggests that this may be an issue should the figure agreed be higher than the valuer's assessment and public money is being used to finance the acquisition.¹⁶⁸

334. The Committee understands that market value is defined as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in the value of other land, and interests belonging to the seller as a result of the forced sale. The Committee heard that, in deciding the value of the land, the valuer may take account of the known existence of other potential purchasers with a special interest in the property.

335. The Big Lottery Fund suggested that it would be useful for the community body to have the valuation early, as it could provide the basis for a negotiated settlement with the owner. It would also give an early indication of the amount of funding needed and provide an opportunity for the community body to make early contact with potential funders to gauge the likelihood of funding being made available.¹⁶⁹

336. 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.

337. 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.

Compensation and grants towards Part 3A community bodies' liabilities to pay compensation (Sections 97T and 97U)

¹⁶⁸ Written submission. Anonymous.

¹⁶⁹ Written submission. The Big Lottery Fund.

338. The new sections 97T and 97U are consequential to the main policy in section 97S and relate to further regulations setting out amounts of compensation payable, who is liable, and how this may be claimed. These sections also provide that Ministers may, in certain restricted circumstances, pay a grant to a Part 3A community body to assist it in meeting the compensation it is required to pay. Ministers are, however, not bound to pay a grant even when all the circumstances specified arise.

339. The Development Trusts Association Scotland raised concerns about this section, which provides owners with a right of compensation from the community body stating that this should be limited to situations where the application is approved.¹⁷⁰

340. The Community Land Advisory Service raised a question in the context of the Part 3 right-to-buy—

“...what is to happen where the absolute right-to-buy causes the owner a capital gains tax or corporation tax liability on the price which could have been avoided or reduced had the owner had control over the timing of the sale. I certainly do not think that the community should bear this cost, but equally do not think the owner is being properly compensated for the deprivation if they are left in this position.”¹⁷¹

341. 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.

342. 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.

Appeals (Sections 97V, 97W, 97X, 97Y, 97Z)

343. The new sections 97V, 97W and 97X set out the rights of appeal to the sheriff and the Lands Tribunal, and the right of reference to the Lands Tribunal in relation to decisions made by Ministers, valuations and questions relating to Part 3A applications.

344. Section 97V provides that the landowner, a member of the community to which a Part 3A community body relates and a creditor in a standard security may appeal against the Ministers’ decision to consent to the application. Subsection (2) allows the Part 3A community body to appeal against a decision to refuse an application and, where there is more than one community body wishing to

¹⁷⁰ Written submission. Development Trusts Association Scotland.

¹⁷¹ Written submission. Community Land Advisory Service.

purchase the land, subsection (3) provides that Ministers' decision on which body's application will proceed is final and cannot be appealed.

345. Section 97W sets out the rights of appeal to the Lands Tribunal in connection with the valuation under the new section 97S. The new section 97X sets out rights of appeal to the Lands Tribunal on a question relating to a Part 3A application. The new Section 97Y provides that parties to a Part 3A application are not prevented from settling or agreeing on a matter which is subject to an appeal under sections 97V or 97W between them. The new section 97Z clarifies some matters of interpretation.

346. 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.

Other issues considered by the Committee

Community use of land

347. The Community Land Advisory Service commented on communities which may have more of an interest in securing the use of land rather than securing ownership at a future date.¹⁷² The Royal Town Planning Institute Scotland suggested that the Bill should consider not only the right-to-buy, but the right to manage as part of the community rights, and provide detail on how this might be facilitated.¹⁷³

348. Brodies LLP suggested that communities could be given the chance to lease property in the first instance to establish whether they could make the property work to pass the test of sustainable development.¹⁷⁴

349. 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.

Best value and best public benefit

350. The Committee heard oral evidence that suggested that some local authorities' interpretation of "best value" (under the Local Government in Scotland Act 2003)¹⁷⁵ might hinder a number of aspects of the proposed legislation.

¹⁷² Written submission. Community Land Advisory Service.

¹⁷³ Written submission. Royal Town Planning Institute.

¹⁷⁴ Written submission. Brodies LLP.

¹⁷⁵ Local Government in Scotland Act 2003. Available at: http://www.legislation.gov.uk/asp/2003/1/pdfs/asp_20030001_en.pdf.

351. John Mundell, Chief Executive of Inverclyde Council, stated—

“...If we are disposing of assets, we are always required to obtain best value, and that normally means market value, whether we use the district valuer or another mechanism to value assets. That is a key issue, but it is not one that the Bill addresses”.¹⁷⁶

352. The Royal Town Planning Institute Scotland suggested that there was a need for clarity in the definition of ‘best value’ and ‘best public benefit’ in terms of the disposal of public land. It stated that this should not only be about financial value, but should also take into consideration social, community and environmental aspects, particularly in terms of the transfer of land to community or voluntary organisations.¹⁷⁷

353. Wendy Reid, of the Development Trusts Association Scotland, stated—

“There is a reason why there has been less movement of other public sector assets into community ownership. According to the Scottish public finance manual, those other public sector bodies have to get the best financial return from assets, whereas local authorities have a bit of dispensation, in that they can dispose of assets at less than market value under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. Communities are very interested in other assets, but up until now, it has been easier to negotiate transfers of local authority assets, because of that flexibility for local authorities to dispose of land at less than best consideration. It would be interesting to see whether the Scottish public finance manual will be reviewed to allow other public sector bodies the same flexibility.”¹⁷⁸

354. The Committee was concerned to hear in oral evidence that Glasgow City Council had bonded some of its land to Barclays Bank which may mean that it would be difficult to release that land for communities. The Committee was concerned that the same situation might exist in other local authority areas.

355. The Committee explored the issue of best value with the Cabinet Secretary and questioned whether some local authorities might consider the best value of the land they hold to be the financial value that they can obtain rather than value to the community being the number one priority. The Committee notes that if that were to be the case it could be a potential hindrance to some communities that might wish to access local authority land or the land of other public bodies. The Cabinet Secretary stated that as local authorities had the power to dispose of land at lower than market value and could treat the public interest as having a value, the issue should not be an obstacle. The Committee subsequently agreed to write to all local authorities in Scotland to ask for confirmation of their policy and practice in relation to the holding and disposal of their land-holdings. The Committee awaits receipt of all the responses from the local authorities in relation to their policy and

¹⁷⁶ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 3 December 2014, Col 50.

¹⁷⁷ Written submission. Royal Town Planning Institute.

¹⁷⁸ Scottish Parliament Rural Affairs, Climate Change and Environment Committee, *Official Report*, 3 December 2014, Col 58.

practice in relation to the holding and disposal of their land holdings and their approach to best value.¹⁷⁹ Responses received to date¹⁸⁰ are available on the Committee's website. **The Committee will review the responses received and consider what further action it wishes to take.**

356. 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.

357. 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.

Provision of support to communities

358. The Committee heard evidence about the importance of providing ongoing support to communities to enable them to take full advantage of the community right to buy provisions. Many stakeholders expressed concerns in relation to those communities most likely to benefit from the provisions (the most affluent) and suggested that more disadvantaged or more marginalised communities could be left behind without investment (including financial support; support to strengthen skills and confidence; knowledge and training; and access to professional advice and support). Many stressed the need for capacity building. The Committee also heard from Susan Carr of the Community Alliance Trust who stated—

“I hear about capacity building all the time, but quite frankly this is not about building capacity; it is about releasing it. That is what really needs to happen. The capacity is there; it is just not released. There are too many barriers for people to get past.”¹⁸¹

359. The Plunkett Foundation echoed the views of many when it stated—

¹⁷⁹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 16.

¹⁸⁰ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. Correspondence from local authorities regarding best value. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/82153.aspx>.

¹⁸¹ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 61.

“It is critical that communities are properly supported to take advantage of opportunities the Bill presents....Outwith this area (the highlands and islands), in lowland and southern rural Scotland, the support is much more fragmented, and communities face a patchy landscape of advice and signposting. Marginalised and disadvantaged communities will need a lot more support in capacity building and confidence raising to realise the potential opportunities.”¹⁸²

360. The Children’s Wood referred to its experience and suggested that mechanisms should be established to monitor and report on levels of community engagement and report on any difficulties.¹⁸³

361. The Committee understands that the broader issues in relation to empowering communities and capacity building are being considered by the LGR Committee and, on that basis, has sought to limit comment to the difficulties faced by communities and the need for support in relation to the provisions in Part 4 of the Bill.

362. The Committee raised concerns about the difficulties communities encounter when faced with issues such as state aid rules, public finance regulations and a range of other matters with the Cabinet Secretary and sought further information on what steps the Scottish Government is taking to put the necessary support in place.

363. The Cabinet Secretary responded by stating—

“... your point about equipping communities with more information about and understanding of the issues is a good one. We have to give much more thought to that. The Land Reform Review Group recommended that we set up a community land agency, and we responded by saying that we will set up a unit in Government, which will look at the issues and work with communities, giving much better advice and operating as a huge support mechanism that facilitates community buyouts. An important function of that new unit will be to explain state aid and the pathway....and I will ensure that it does that”.¹⁸⁴

364. The Committee questioned the Cabinet Secretary on HIE’s social and land remit and whether the Scottish Government had plans to extend the remit of Scottish Enterprise. The Cabinet Secretary responded by stating that all agencies, including Scottish Enterprise and HIE, must play a role in taking the agenda forward. The Cabinet Secretary also suggested that the Scottish Government should give further thought as to how the social remit should be taken forward outwith the Highlands and Islands.¹⁸⁵

¹⁸² Written submission. Plunkett Foundation.

¹⁸³ Written submission. The Children’s Wood.

¹⁸⁴ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Col 9.

¹⁸⁵ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 10 December 2014, Cols 9-10.

365. 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.

366. 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.

367. 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.

368. 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.

369. 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.

Relationship between applications under Part 4 and the Part 5 asset transfer provisions

370. The Community Woodland Association stated that the interaction of Part 3 of the 2003 Act and the asset transfer provision contained in Part 5 of the Bill require to be addressed. Specifically, it questioned whether communities, having failed with an asset transfer request, can then attempt a Part 3A acquisition and, if so, sought clarification as to what the decision-making process would be in cases where Scottish Ministers are the landowner.¹⁸⁶

371. 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.

¹⁸⁶ Written submission. Community Woodland Association.

ISSUES NOT INCLUDED IN THE BILL

Crofting Community Right to Buy (Part 3)

372. Many stakeholders expressed concern in relation to the apparent omission in the Bill of any measures amending Part 3 of the 2003 Act. They stated that they welcomed the correspondence from the Scottish Government responding to the concerns of the LGR Committee and providing notification of its intention to use the Bill to simplify Part 3 of the 2003 Act.

373. The Committee questioned stakeholders on the consultation on the crofting community right-to-buy. Simon Fraser, of Anderson MacArthur, stated—

“The consultation on the crofting community right-to-buy was fine. The suggested changes to part 3 of the Land Reform (Scotland) Act 2003 have come along pretty late in the day, and it will be essential to ensure that the enhanced community right-to-buy—which, in a way, mirrors the current crofting community right-to-buy—is brought into line with whatever is done to the crofting community right-to-buy as a consequence of the new measures.”¹⁸⁷

374. 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.

¹⁸⁷ Scottish Parliament Rural Affairs, Climate Change and Environment Committee. *Official Report*, 3 December 2014, Col 9.

**ANNEXE A: EXTRACT FROM THE MINUTES OF THE RURAL AFFAIRS,
CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

25th Meeting, 2014 (Session 4)

Wednesday 8 October 2014

Community Empowerment (Scotland) Bill (in private): The Committee agreed its approach to scrutiny of Part 4 of the Bill at Stage 1.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

29th Meeting, 2014 (Session 4)

Wednesday 19 November 2014

Community Empowerment (Scotland) Bill: The Committee took evidence from—

Dave Thomson, Head of Land Reform Policy Team
Ian Turner, Community Empowerment Team Leader
Rachel Rayner, Lawyer, Scottish Government.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

30th Meeting, 2014 (Session 4)

Wednesday 26 November 2014

Community Empowerment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Peter Peacock, Policy Director, Community Land Scotland
Sandra Holmes, Head of Community Assets, Highlands and Islands Enterprise
David Prescott, Chair of the Board, Holmehill Community Buyout
Duncan Burd, Rural Affairs Sub-Committee, Law Society of Scotland
John Watt, specialist in community land ownership.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

31st Meeting, 2014 (Session 4)

Wednesday 3rd December 2014

Community Empowerment (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Jon Hollingdale, Chief Executive, Community Woodlands Association
Simon Fraser, Solicitor, Anderson MacArthur
Malcolm Combe, Lecturer in Law, School of Law, University of Aberdeen
Rory Dutton, Development Officer, Development Trusts Association Scotland
Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates
Wendy Reid, Development Manager, Development Trusts Association Scotland
John Mundell, Chief Executive, Inverclyde Council
Dr Colleen Rowan, Membership and Policy Officer, Glasgow and West of Scotland Forum of Housing Associations
David Cruickshank, Executive Director, Lambhill Stables Development Trust
Susan Carr, Community Alliance Trust
Professor Alan Miller, Chair, Scottish Human Rights Commission.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

32nd Meeting, 2014 (Session 4)

Wednesday 10 December 2014

Community Empowerment (Scotland) Bill

The Committee took evidence on the Bill at Stage 1 from—

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment
Dave Thomson, Head of Land Reform Policy Team, Scottish Government.

Community Empowerment (Scotland) Bill (in private): The Committee considered evidence heard earlier in the meeting.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

2nd Meeting, 2015 (Session 4)

Wednesday 14 January 2015

Community Empowerment (Scotland) Bill (in private): The Committee

considered a draft stage 1 report on Part 4 of the Bill and will consider a revised draft at its meeting on 21st January 2015.

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

MINUTES

3rd Meeting, 2015 (Session 4)

Wednesday 21 January 2015

Community Empowerment (Scotland) Bill (in private): The Committee considered a revised draft stage 1 report on Part 4 of the Bill. Various changes were agreed to, and the report was agreed for publication. The Committee will consider the responses to its letter to local authorities on best value at a future meeting.

ANNEXE B ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE

29th Meeting, 2014 (Session 4), Wednesday 19 November 2014

ORAL EVIDENCE

Dave Thomson, Head of Land Reform Policy Team
Ian Turner, Community Empowerment Team Leader
Rachel Rayner, Lawyer, Scottish Government.

30th Meeting, 2014 (Session 4), Wednesday 26 November 2014

ORAL EVIDENCE

Peter Peacock, Policy Director, Community Land Scotland
Sandra Holmes, Head of Community Assets, Highlands and Islands Enterprise
David Prescott, Chair of the Board, Holmehill Community Buyout
Duncan Burd, Rural Affairs Sub-Committee, Law Society of Scotland
John Watt, specialist in community land ownership.

31st Meeting, 2014 (Session 4), Wednesday 3rd December 2014

ORAL EVIDENCE

Jon Hollingdale, Chief Executive, Community Woodlands Association
Simon Fraser, Solicitor, Anderson MacArthur
Malcolm Combe, Lecturer in Law, School of Law, University of Aberdeen
Rory Dutton, Development Officer, Development Trusts Association Scotland
Sarah-Jane Laing, Director of Policy and Parliamentary Affairs, Scottish Land and Estates
Wendy Reid, Development Manager, Development Trusts Association Scotland
John Mundell, Chief Executive, Inverclyde Council

Dr Colleen Rowan, Membership and Policy Officer, Glasgow and West of Scotland Forum of Housing Associations
David Cruickshank, Executive Director, Lambhill Stables Development Trust
Susan Carr, Community Alliance Trust
Professor Alan Miller, Chair, Scottish Human Rights Commission.

32nd Meeting, 2014 (Session 4), Wednesday 10 December 2014

ORAL EVIDENCE

Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment
Dave Thomson, Head of Land Reform Policy Team, Scottish Government.

SUPPLEMENTARY WRITTEN EVIDENCE.....

Dave Thomson, Head of Land Reform Policy Team, Scottish Government

ANNEXE C LIST OF OTHER WRITTEN EVIDENCE

SUBMISSIONS RECEIVED IN RESPONSE TO CALL FOR VIEWS

Bill

- [Community Land Scotland \(172KB pdf\)](#)
- [Glasgow and West of Scotland Forum of Housing Associations \(217KB pdf\)](#)
- [Holmehill \(Dunblane\) Community Buyout Group \(235KB pdf\)](#)
- [Scottish Land Fund Committee \(202KB pdf\)](#)

OTHER WRITTEN EVIDENCE

Additional Information

Correspondence regarding the Bill:

- [Letter from Joe FitzPatrick MSP, Minister for Parliamentary Business on the Community Empowerment \(Scotland\) Bill - 21 August 2014 \(862KB pdf\)](#)
- [Letter to the Local Government and Regeneration \(LGR\) Committee regarding its agreed approach to consideration of Part 4 of the Community Empowerment \(Scotland\) Bill Part 4 Community Right to Buy at Stage One - 8 October 2014 \(53KB pdf\)](#)
- [Letter from the LGR Committee following the RACCE Committee's agreed approach to the Bill - 8 October 2014 \(109KB pdf\)](#)
- [Letter from the Minister for Local Government and Planning, Derek McKay, to the Local Government and Regeneration Committee Convener outlining areas which the Scottish Government plans to bring forward amendments at Stage 2. This letter was copied to the RACCE Convener - 6 November 2014 \(834KB pdf\)](#)

- [Letter from Minister for Local Government and Community Empowerment, Marco Biagi, to the Delegated Powers and Law Reform Committee on the Scottish Government's Community Empowerment \(Scotland\) Bill on its report on the Bill. This letter was copied to the RACCE Convener - 19 December 2014 \(1499KB pdf\)](#)
- [Letter from Convener of the Delegated Powers and Law Reform Committee on Bill 20 January 2015 \(93KB pdf\)](#)